

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME 2 Hours

DATE: April 13, 1995

SUBJECT: Scallop Management

ACTION REQUIRED

- (a) Review status of Emergency Rule closure of the EEZ.
- (b) Examine Draft FMP that continues closure of EEZ. Consider final approval of revised FMP for Secretarial review.
- (c) Develop plan amendment to further manage the fishery.
- (d) Review information on crab bycatch and inclusion of scallop vessels in the Research Plan.

BACKGROUND

Emergency Closure

In February, a vessel not registered with the State fished for scallops in the EEZ. The vessel fished in the Prince William Sound Registration Area which was closed to Alaska registered vessels after the GH (50,000 lbs) was taken on January 26. The State did not have authority to stop the fishing, so on February 17, 1995, The Council met by emergency teleconference to address the situation. The Council concurred that NMFS implement an emergency rule to close the EEZ to scallop fishing to prevent further uncontrolled harvests. The emergency rule, Agenda Item D-1(a), took effect on February 23, and was published on March 1, 1995. The Council recommended that NMFS maintain the closure for the full 180 days allowed, so it will expire August 28.

Interim FMP

Additional steps to prevent unregulated and uncontrolled harvests after the ER expires can be taken by adopting the revised draft FMP (provided in your supplemental folders). This FMP will continue the closure, without hiatus, if it is submitted to the Secretary this week. The FMP will provide time for the Council to develop a more comprehensive management regime.

Future Management

The FMP we approved earlier is no longer viable, because, without a change to the Magnuson Act, we cannot simply defer management to the State. All management measures will need to be implemented through federal regulations. At this stage, the Council can recommend management measures to include for analysis in a plan amendment. Management measures previously adopted are listed in the attached tables. Depending on the complexity of management measures chosen for analysis, staff may be able to have an amendment drafted by June or September. Assuming final approval then, the amendment could be in effect sometime in 1996.

Crab Bycatch

Recommendations on crab bycatch could be made at this time. Last January, the Council recommended that crab bycatch limits in the Bering Sea be set annually based on a percentage of total survey crab abundance, which is estimated each year from the NMFS survey. The total survey estimate of abundance is simply the sum of indices for each size group and not the absolute total population. The Council approved the following percentages: *C. opilio*, 0.003176% and *C. bairdi*, 0.13542%, which equate to about 300,000 *opilio* and 360,000 *bairdi* crab based on the 1994 survey crab abundance.

For red king crab, the Council notified the public that a percentage within the range 0.00176 - 0.0176% was being considered for final approval in April. These percentages equate to approximately 500 to 5,000 red king crab given current population size. Bycatch of red king crab in the Bering Sea totaled 1 crab (expanded to 6) in 1993, and 55 crab in 1994. Scallop industry representatives are concerned about the possibility that, with a very low cap, one vessel could intentionally shut down the entire fleet before OY is attained.

Scallop Inclusion in Research Plan

In January, the Council requested information on costs of including the scallop fishery in the research plan. Under a fully federal FMP, incorporation of this fishery in the plan would be essential. Assuming average annual landings of 1.2 million pounds and an exvessel price of \$6/ lb, total exvessel revenue will average \$ 7.2 million per year. At a maximum 2% research plan fee, \$144,000 would be collected from the scallop fishery under the research plan. ADF&G currently mandates 100% observer coverage, and estimates that fishing seasons would total about 3 months, with 18 vessels participating. This equates to 54 observer months, or 1,620 observer days. At \$220 per day for observer coverage, the scallop fishery will cost the research plan about \$356,400, leaving a net loss of \$212,400, which must be subsidized by other fisheries. Costs would be lower with less coverage, however.

Table 1. Management measures adopted by the Council on April 23, 1994, for the scallop fishery in Alaska.

Category 1 (Fixed in FMP)	Category 2 (Discretion of State)
Bycatch Limits in the Bering Sea	Legal Gear
Closed Waters	Minimum Size Limits
Permit Requirements	Reporting Requirements
Federal Observer Requirements	Guideline Harvest Levels
Limited Access (Moratorium, License limitation, Individual quotas, etc.)	In-season Adjustments
	Districts, Subdistricts and Sections
	Fishing Seasons
	State Observer Requirements
	Registration Areas
	Closed Waters
	Efficiency Limits
	Bycatch Limits in the GOA and Aleutians
	Other

Table 2. Scallop fishery moratorium elements adopted by the Council, April 1994.

<u>Qualifying Criteria:</u>	Vessels must have participated (made at least one landing) in 1991 or 1992 or 1993, <u>or</u> must have participated for at least four years between January 1, 1980 and January 20, 1993. Vessels that were in the "pipeline" to fish for Alaskan scallops (i.e., under construction, being refitted, relocated, etc.) but had not made a required landing, would not qualify under the moratorium.
<u>Length of Moratorium:</u>	The moratorium will remain in effect until the Council rescinds or replaces; not to exceed 3 years from date of implementation, but Council may extend for two years if a permanent limited access program is imminent.
<u>Crossovers:</u>	Crossovers to other fisheries (groundfish, crab, or halibut) during the moratorium will not be allowed, except for vessels that were qualified under both the scallop and groundfish moratoria.
<u>Reconstruction:</u>	Vessels may be reconstructed during the moratorium. If physical reconstruction started on or after January 20, 1993, the new size is restricted to a 20% increase in vessel length. Only one upgrade is allowed.
<u>Replacement:</u>	Qualifying vessels can be replaced with non-qualifying vessels as often as desired so long as the replaced vessel leaves the fishery or bumps another qualifying vessel out in the case of multiple transactions. Vessel size can be increased as many times as desired, but is restricted to a 20% maximum increase in original qualifying vessel length. For vessels lost or destroyed before or during the moratorium, qualifying vessels can be replaced with non-qualifying vessels subject to a 20% maximum increase in vessel length. Replaced vessels cannot be salvaged and come back into the fishery.
<u>Exemptions:</u>	Vessels 26 feet or less in the GOA and vessels 32 feet or less in the BSAI are exempted from the moratorium only if they use gear other than dredges or trawls (hence, diving would be allowed from these vessels).
<u>Appeals:</u>	The appeals procedures will be a one step process similar to those for the sablefish and halibut IFQ program.

IFR Doc. 95-5033 Filed 2-28-95; 8:45 am].
BILLING CODE 3510-22-W

50 CFR Part 673

[Docket No. 950223058-5058-01; I.D.
022395A]

RIN 0648-AH93

Scallop Fishery Off Alaska; Closure of Federal Waters To Protect Scallop Stocks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS is closing the exclusive economic zone (EEZ) off Alaska to fishing for scallops in response to resource conservation concerns that result from unanticipated fishing for scallops in the EEZ by vessels outside the jurisdiction of Alaska State regulations governing the scallop fishery. This action is necessary to prevent localized overfishing of scallop stocks. This emergency closure is intended to control an unregulated scallop fishery in the EEZ until a Federal fishery management plan (FMP) can be implemented.

DATES: Effective February 23, 1995, through May 30, 1995. Comments must be submitted by March 10, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Attention: Lori Gravel. Copies of the Environmental Assessment prepared for the emergency rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for scallops by U.S. vessels off Alaska is managed by the State of Alaska under regulations implemented by the Alaska Department of Fish and Game (ADF&G) at 5 AAC 38.076. These regulations establish guideline harvest levels for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, gear restrictions, and measures to control the processing efficiency of undersized scallops that include a ban on the use of mechanical shucking machines and a limitation on vessel crew size.

Section 306(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) provides that a state may not directly or indirectly regulate a fishing vessel in Federal waters unless the vessel is registered under the law of that state. As a result, regulations implemented by the State of Alaska to manage the scallop fishery only apply in the EEZ off Alaska to vessels registered under the laws of the State. Until now, all vessels fishing in the EEZ have been registered with the State and have been subject to ADF&G fishing regulations at 5 AAC 38.076.

The ADF&G recently became aware of a vessel fishing for scallops in the EEZ that is not registered under the laws of the State. The vessel is fishing for scallops in waters closed to Alaska registered vessels by the ADF&G. The State does not have authority to stop this activity because the vessel is not registered with the State and does not fall under its jurisdiction.

Section 305(c) of the Magnuson Act authorizes NMFS to implement emergency regulations necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided by the Magnuson Act. These emergency regulations may remain in effect for not more than 90 days after publication in the Federal Register, with a possible 90-day extension.

The North Pacific Fishery Management Council (Council) convened an emergency teleconference meeting on February 17, 1995, to address the situation of unregistered vessels fishing for scallops in the EEZ outside the management jurisdiction of the State of Alaska. The Council requested NMFS to implement emergency rulemaking to close the EEZ to fishing for scallops to prevent further unregulated and uncontrolled fishing for scallops in Federal waters. Continued fishing for scallops by vessels not registered with the State poses significant conservation and management concerns that can be effectively addressed in a timely manner only through emergency closure of the EEZ. A brief discussion of the State's management program for scallops and the Council's concerns and justification for emergency rule action follow.

Alaska State's Scallop Management Program

The primary pectinid harvested off Alaska is the weathervane scallop (*Patinopecten caurinus*). Since the early 1980's, between 4 and 20 vessels annually have participated in the Alaska

scallop fishery. Gross earnings experienced by the fleet during this same period of time has ranged from almost \$.9 million in 1983 to over \$7 million in 1992.

The ADF&G initiated development of a management plan for the scallop fishery in response to overfishing concerns resulting from recent changes in the weathervane scallop fishery off Alaska. Weathervane scallops possess biological traits (e.g., longevity, low natural mortality rate, and variable recruitment) that render them vulnerable to overfishing. Record landings occurred in the late 1960's (about 1.8 million lbs (816.47 mt) shucked scallop meat), followed by a significant decline in catch through the 1970's and 1980's when landed catch ranged between 0.2 (90.72 mt) and 0.9 million lbs (408.23 mt). The ADF&G believes this decline was due, in part, to reduced abundance of scallop stocks. Landings since 1989 have increased to near record levels. Since 1989, the number of vessels fishing for scallops has not increased (about 10-15 vessels annually), although an increase in fishing power is evidenced by a substantial increase in average vessel length (from 84 ft (25.6 m) registered length in 1981 to 110 ft (33.5 m) in 1991) a predominance of full-time scallop vessels, and an increased number of deliveries. Until 1993, the State did not have a data collection program, although some indication exists that overfishing, or at least localized depletion, may have occurred. Data voluntarily submitted by participants in the scallop fishery during the early 1990's showed that an increase in meat counts per pound has occurred, indicating that smaller scallops now account for a greater proportion of the harvest. These data also suggest that catch-per-unit-of-effort in traditional fishing grounds has decreased.

Limited age data suggest that the scallop stock historically exploited off west Kodiak Island experienced an age-structure shift from predominately age 7 and older scallops in the late 1960's to an age structure predominated by scallops less than age 6 during the early 1970's. This shift indicated that harvest amounts had exceeded sustainable levels. Changes in fleet distribution from historical fishing grounds primarily in State waters to previously unfished grounds in the EEZ compounded management concerns.

In response to these concerns, the ADF&G implemented a management plan for the scallop fishery in 1993 that established a total of eight fishery registration areas corresponding to the

Southeastern, Yakutat, Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula, Dutch Harbor, and Bering Sea portions of the State. To prevent overfishing and maintain reproductive potential of scallop stocks, ADF&G established a guideline harvest range (GHR) for each of the traditional weathervane scallop fishing areas. In the absence of biomass estimates needed to implement an exploitation rate harvest strategy, the upper limit of the GHRs is specified as the long-term productivity (catch) from each of the traditional harvest areas. The ADF&G may adjust GHRs based on changes in stock status, such as shifts in population size/age structure coupled to changes in area-specific catch-per-unit-effort.

If a GHR for a registration area is not specified, ADF&G may authorize fishing for weathervane or other scallop species under special use permits that generally include location and duration of harvests, gear limitations and other harvest procedures, periodic reporting or logbook requirements, requirements for on board observers, and scallop catch or crab bycatch limits.

The ADF&G also has implemented king and Tanner crab bycatch limits to constrain the mortality of Tanner crab and king crab incidentally taken by scallop dredge gear. Generally, crab limits are set at 1 percent of total crab population for those management areas where crab stocks are healthy enough to support a commercial fishery. In areas closed to commercial fishing for crab, the crab bycatch limits for the scallop fishery are set at 0.5 percent of the total crab population.

Specified waters are closed to fishing for scallops to prevent scallop dredging in biologically critical habitat areas, such as locations of high bycatch of crab or nursery areas for young fish and shellfish. State regulations also require each vessel to carry an observer at all times to provide timely data for monitoring scallop catches relative to GHRs and for monitoring crab bycatch. Observers also collect scientific data on scallop catch rates, size distribution and age composition. This information is required by ADF&G for potential adjustment of GHRs based on changes in stock in stock status and productivity.

ADF&G regulations establish gear specifications to minimize the catch of undersized scallops and efficiency controls to reduce the economic feasibility of harvesting scallops much smaller than sizes associated with optimum yield. Current efficiency controls include a ban on automatic shucking machines and a crew limit of 12 persons.

The ADF&G has closed all registration areas to fishing for scallops because either the 1995 scallop GHR has been reached or the scallop fishing season has yet to open (Table 1). The fishing vessel currently fishing for scallops in the EEZ outside State jurisdiction is operating in the Yakutat and Prince William Sound registration areas, which the State closed because the GHR for these areas has been harvested. In 1994, vessels fished for scallops in the Bering Sea and Alaska Peninsula registration areas under special-use permits. These areas were closed in late summer due to crab bycatch. The 1994 scallop fisheries in other registration areas generally were closed based on the attainment of the GHR (Table 1).

TABLE 1.—ALASKA STATE SCALLOP REGISTRATION AREAS, UPPER LIMIT OF GHRs (LBS SHUCKED MEAT), 1995 TANNER (TAN) AND KING CRAB BYCATCH LIMITS (NUMBER OF CRAB), 1994 AND 1995 SCALLOP AND CRAB CATCH AMOUNTS (IN PARENTHESIS) AND SEASON OPENING AND CLOSURE DATES

Area	GHR (catch)	Crab limits ¹ (catch)	1995 season open—closed dates
Yakutat	250,000	No crab limit	1/10/95—2/14/95
1995 catch	² (245,000)		
1994 catch	(236,830)		
Prince William Sound	50,000	Tan—630	1/10/95—1/26/95
1995 catch	² (48,000)	² (69)	
No 1994 fishery			
Cook Inlet	20,000	King—138	8/15/95—
1994 catch	(20,431)	(42)	
		Tan—18,070	
		(13,300)	
Kodiak	400,000	King—283	7/1/95—
1994 catch	(381,850)	(157)	
		Tan—199,500	
		(69,274)	
Dutch Harbor	170,000	King—45	7/1/95—
1994 catch	(1,931)	(6)	
		Tan—50,500	
		(792)	
Alaska Peninsula	Permit	King—85	7/1/95—
1994 catch	(66,412)	(0)	
		Tan—52,530	
		(26,379)	
Bering Sea	Permit	King—17,000	7/1/95—
1994 catch	(505,439)	(55)	
		Tan—260,000	
		(262,500)	

¹ Crab bycatch limits for Prince William Sound and Cook Inlet are further divided into State management districts.

² Scallop catch and crab bycatch amounts do not include unreported amounts taken by the catcher/processor vessel fishing in the management area outside of State jurisdiction.

Continued fishing for scallops by vessels outside the jurisdiction of the

State will result in overharvest of the State's GHR's and potential localized

overfishing of scallop stocks. The catcher/processor vessel currently

fishing in the Prince William Sound registration area may have the potential to harvest nearly 65,000 lbs (29.48 mt) of shucked scallop meat per week based on 1995 ADF&G observer data collected from a similar vessel. At this rate of harvest, the Prince William Sound GHR could be overharvested by a significant amount since the fishery was closed on January 26, 1995. Although specific information on the vessel's harvesting activity is not available, the U.S. Coast Guard boarded the vessel on February 21, 1995, and was informed that 54,000 lbs (24.49 mt) of scallop meat was on board. This level of retained catch alone exceeds the Prince William Sound GHR by over 100 percent. The Council is concerned that this or other vessels fishing outside the jurisdiction of the State will continue to severely overharvest other GHRs and result in localized overfishing of scallop stocks.

For the reasons stated above, NMFS concurs with the Council's determination that unregulated and uncontrolled fishing for scallops by vessels outside the jurisdiction of Alaska State regulations poses a serious conservation concern that must be addressed as quickly as possible by emergency rulemaking. Although weathervane scallop is the primary species of commercial interest, NMFS' concern about localized depletion and overfishing extends to all scallop species that may be harvested in the EEZ by unregulated vessels. NMFS further concurs in the Council's determination that immediate closure of the EEZ off Alaska to fishing for scallops is an appropriate action to address the scallop management void in the EEZ and concerns of localized overfishing of scallop stocks.

The Council is considering options for a Federal FMP for scallops. Given the time necessary for the preparation of an FMP and the statutory review and implementation schedule for FMPs set out under sections 303 and 304 of the Magnuson Act, the Council requested NMFS repromulgate the emergency closure of the EEZ for an additional 90 days as authorized under section 305(c)(3)(B) of the Magnuson Act. NMFS agrees that additional time may be necessary for the preparation and implementation of a Federal management program for scallops in Federal waters and will consider promulgating a second emergency rule under the Magnuson Act at the appropriate time.

There are many factors to be considered in determining whether to issue a second emergency rule in that such a rule could have an impact on

State-registered vessels that participate in this fishery under the laws of the State of Alaska. Vessels that participate in the Yakutat and Prince William Sound scallop fisheries will not be affected because ADF&G has closed these management areas for the remainder of the year, since the GHR has been harvested. The Cook Inlet fishery is conducted primarily in State waters and will be available to State-registered vessels when the fishery opens in mid-August (Table 1). Scallop fishermen wishing to participate in the westward area scallop fisheries (Kodiak, Dutch Harbor, Alaska Peninsula, and Bering Sea registrations area) when these fisheries open July 1 would be restricted to fishing in State waters under ADF&G management regulations if a second 90-day emergency rule is promulgated in the same form as this emergency rule. If a second emergency rule is issued, ADF&G would make a downward adjustment of the GHRs specified for the westward area to compensate for a scallop fishery constrained to State waters. Given that all the Bering Sea scallop harvest comes from Federal waters, as well as about 70 percent of the scallop harvest from other westward registration areas, and assuming an exvessel price of \$6.00 per lb, the potential foregone harvest and revenue could approach 820,574 lbs (372.21 mt) and nearly \$5 million. Based on 1994 data, about 12 vessels made landings of scallops harvested in a westward area fishery and could potentially be affected by a second emergency rule action.

Comments on this emergency rule will be accepted by NMFS through March 10, 1995. (See ADDRESSES.) NMFS also is soliciting comments on appropriate Federal management measures the Council should consider during its further development of an FMP for the Alaska scallop fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable laws.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is not required to be issued with prior notice and opportunity for prior public comment.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS finds that the immediate need to prevent overfishing and localized depletion of scallops in the EEZ off

Alaska, as explained in the preamble to this rule, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to prevent localized overfishing of scallop stocks by vessels fishing outside the jurisdiction of Alaska State law constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effective date.

List of Subjects in 50 CFR Part 673

Fisheries.

Dated: February 23, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 673 is added as follows:

1. Part 673 is added to Chapter VI of 50 CFR to read as follows:

PART 673—SCALLOP FISHERY OFF ALASKA

Sec.

673.1 Purpose and scope.

673.2 Definitions.

673.3 Prohibitions.

Authority: 16 U.S.C. 1801 *et seq.*

§ 673.1 Purpose and scope.

(a) These regulations implement Federal authority under the Magnuson Act to manage the scallop fishery in the exclusive economic zone off Alaska.

(b) Regulations in this part govern commercial fishing for scallops in the exclusive economic zone off Alaska.

§ 673.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms in 50 CFR part 673 have the following meanings:

Exclusive Economic Zone (EEZ) (see § 620.2 of this chapter) *Scallop(s)* means any species of the family Pectinidae, including without limitation weathervane scallops (*Patinopecten caurinus*).

§ 673.3 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to take or retain any scallops in the EEZ seaward off Alaska.

Scallops

Corrections

Federal Register
Vol. 60, No. 45
Wednesday, March 8, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 703, 715, 731, 752, and Appendix G to Chapter 7

[AIDAR Notice 95-1]

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 95-4111 beginning on page 11911 in the issue of Friday, March 3, 1995, make the following corrections:

1. The CFR parts should appear as set forth above.
2. On page 11913, in the first column, remove "PART 724—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION" and "724.170 [Amended]".

BILLING CODE 1505-01-D

The formula for calculating the value of the Index is as follows:⁴

$$\frac{(MV_1) + (MV_2) + \dots + (MV_{100})}{\text{Divisor}} \times 100$$

Where:

MV_n=Price x Shares outstanding for each component of the Index
Divisor=Number calculated to achieve a base value of 370 for the Index as of the close of trading on December 14, 1994.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 673

[Docket No. 950223058-5058-01; I.D. 022395A]

RIN 0648-AH93

~~Scallop Fishery Off Alaska; Closure of Federal Waters To Protect Scallop Stocks~~

→ Correction

In rule document 95-4942 beginning on page 11054 in the issue of Wednesday, March 1, 1995, make the following corrections:

1. On page 11055, in the third column, in the fourth line from the bottom, "optimum" was misspelled.

§ 673.2 [Corrected]

2. On page 11056, in the third column, in § 673.2, in the definition for *Exclusive Economic Zone (EEZ)*, in the second line, "*Scallops(s)* means" should begin on the third line.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35326; File No. SR-Phlx-95-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Listing and Trading of Options on the Phlx USTOP Index

Correction

In notice document 95-3327 beginning on page 8104 in the issue of Friday, February 10, 1995 make the following correction:

On page 8104, in the third column, the formula for calculating the value of the Index was inadvertently omitted and should appear as follows:

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 402

Amendments to Regulations for the Government Securities Act of 1986

Correction

In rule document 95-4941 beginning on page 11022 in the issue of Wednesday, March 1, 1995 make the following correction:

§402.2e [Corrected]

On page 11026, in the first column, in §402.2e(a)(1), in the third line "§402.2(a)" should read "§402.2".

BILLING CODE 1505-01-D

⁴ The formula for calculating the value of the Index is the same as that previously approved by the Commission for calculating the value of the Phlx Big Cap Index. See Securities and Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994). Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on February 2, 1995.

**KODIAK FISH COMPANY**

F/V Alliance F/V Provider
P. O. Box 469
Kodiak, Alaska 99615-0469



March 31, 1995

Mr. Rick Lauber
Chairman, North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510



Dear Mr. Lauber:

We are writing in regard to elements of the fishery management plan for scallops. Since the January Council meeting, events have so changed the nature of the discussions the Council will have regarding the draft FMP that we are unsure what is on the table at this time.

We urge the Council to give final approval at this meeting to the draft FMP in which primary responsibility for management is deferred to the State of Alaska. We would like to have a moratorium control date contained in the FMP which would limit entry in the fishery until a quota share system can be developed and implemented. We would like the qualifying period to include the one year prior to the control date or four years of landings during the years 1980 to the control date. We believe that the OY for the fishery should be set no higher than the harvest of record.

The scallop observer program has been conducted to date primarily to gather bycatch information. The crab and other bycatch species caught in the scallop fishery are all exhaustively detailed. Short term mortality as measured by the observers is 11.3%. In 1993, mortality on bairdi in the Bering Sea was 25,715 and for opilio, 3,086. Long term mortality from this fishery may be guessed at from the studies being done currently which indicate that time and temperature while on deck may be more lethal than physical injuries. The Bering Sea scallop fishery is conducted in the summer months and so total mortality may be quite low. Accordingly, we would like to see mortality as the cap rather than total animals caught.

For red king crab, the Council should note that data used for the ADF&G report of red king crab bycatch in the scallop fishery in 1993 was miscoded and rather than a bycatch of several dozen red king crabs, only one red king crab was observed. In this case, mortality percentages become useless. ADF&G had set a cap of 17,000 red king crab based on a performance standard of 1 red king crab per tow. The actual observed red king crab in 1993 was one crab and in 1994 eight red king crab were observed. The 1994 Bering Sea fishery lasted approximately nine weeks with eight vessels taking 520,000 lbs of scallop

meats (about 5 million lbs round weight and close to 10,000,000 scallops.) It is apparent that in the area the scallop fleet is now fishing, red king crab are not abundant.

The Council should be aware that a weathervane scallop fishery had not occurred in the Bering Sea prior to 1992 though scallopers have explored the area for commercial concentrations off and on since the early 70's. As scallop abundance is highly variable depending on currents and other environmental conditions which are not consistent from year to year, it is unknown if environmental conditions which favored settlement in the area the fleet is now fishing may also have occurred elsewhere in the Bering Sea. A bycatch limit based on the extremely low levels in this area may preclude the exploitation of other commercial concentrations of scallops which might be found in other areas of the Bering Sea.

Our vessel has undertaken exploration in other areas of the Bering Sea using survey data, anecdotal information from other fisheries, and bottom characteristics without finding commercial abundances. We would not presume that other commercial concentrations exist - nor would we assume that they do not. However, with stock abundance low in some areas of the Gulf of Alaska, we would like to be able to explore for those possible other beds in the Bering Sea. We support the imposition of a bycatch cap and are encouraged by the State's management which monitors individual performance closely.

However, the suggested cap of 500 red king crab appears to be more of an allocation issue rather than one of conservation. In a personal communication in mid March, Dr. Gordon Kruse of ADF&G told me that a cap of less than 6,000 red king crab is allocational and not meant as a conservation tool. ADF&G observers count approximately 30-40% of tows in the scallop fishery. Due to the extrapolation of observed catch rates over non observed catches, the fleet's observers would only have to see 75 red king crab in order for a cap of 500 to be reached.

We would ask that the Council be reasonable and at least give the scallop fleet a cap of 5,000 red king crab which would allow us to look for other commercial beds in the Bering Sea. If commercial concentrations in fishable areas aren't found, the fleet won't be using the cap. If they are found, it will provide a reasonable cap. If the entire cap is caught, its effect on the overall health of the red king crab stock will still be insignificant. We, quite frankly, are not optimistic about finding other commercial scallop beds there. But the Bering Sea has surprised people who know more than we do and we could do with a nice surprise right about now.

We would like to be contained under the umbrella of the research plan but don't wish the plan's assessments to be stacked atop the already significant percentage of about 5% of gross stock that we now pay for the required 100% observer coverage. The program has gathered significant information about the resource and the fishery. But the low volume

of the scallop fishery means that our observer costs per dollar value of product sold is by far the highest of any fishery in the North Pacific.

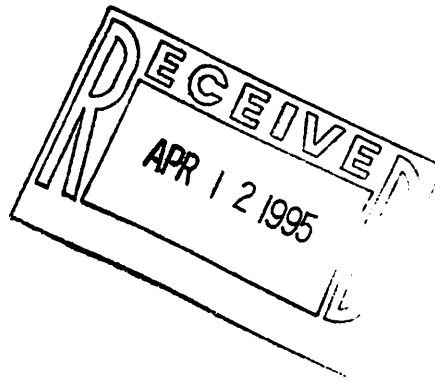
In regard to the Mr. Big incident, we don't know what to think at this point. Our preference is to go ahead with the FMP as it has been written and look for an amendment to Magnuson to resolve the loophole issue. To go back and reinvent the State's scallop management measures in federal regulation will set us back years. We also have no illusions about the state of the federal budget when it comes to regulation and management of our fishery. We think our fishery has demonstrated the effectiveness of the State's ability to influence individual vessel behavior and don't relish being all for one and one for all with vessels of Mr. Big's ilk.

What we want is to get an ITQ plan in place for this fishery. We are a single target fishery with very little bycatch and a high retention rate. We have a very small quota and a very small fleet. We stand to gain tremendously from benefits of quota share plans such as maximizing yield per recruit and minimizing bycatch. The Council should echo State concerns with the Mr. Big loophole and send a strong message to Congress that won't be ignored. We're willing to take our chances with Congress in the hope that the Council can move on and do what's really needed to protect this resource and the fishery that depends on it.

Thank you for the opportunity to comment.

Sincerely,

TERESSA and MARK KANDIANIS
FV PROVIDER



**Agenda Item D-1
Scallop Management**

April 12, 1995

Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Chairman Lauber:

The purpose of this letter is to make perfectly clear that the recent mishap with another industry member were never supported by me or the rest of the Alaska scallop fleet. As you know, I have participated fully in the Council process this past 12 months and have worked with you in the development of a moratorium and a fishery management plan (FMP) that will work for the Alaska scallop fishery. During this period, the Council made it clear that we all would be entering a partnership with the State of Alaska in terms of management and enforcement and that the industry should follow the directives of the Alaska Board of Fisheries and the Alaska Department of Fish & Game. These state agency management measures would comply with the Magnuson Act and fall within the Council's oversight authority as spelled out in the FMP.

The FMP was approved by the Council in April 1994. The fleet had expected that it would have been implemented by the beginning of 1995. In November we were alerted by your office that NOAA General Counsel had several issues with regard to implementing regulations which they wanted Council clarification. That discussion was held during your January 1995 meeting.

Since last April, the scallop industry has understood the intent of the Council and the Board of Fisheries and have operated as if the FMP were in place. This is behavior that the Council expects from the fishing industry and has been an unwritten policy in all federal fisheries here in Alaska.

Our 1995 scallop season began on January 10 in Yakutat. Following this two-week opening, the state doesn't reopen state waters until July 1. As in prior years, vessels have operated in both state and federal waters during the seasons specified by the Board of Fisheries. I was very concerned when I received word that another vessel had chosen to continue fishing in federal waters once the Yakutat season had closed. This activity gave the entire fishing industry a "black eye". All other scallop operators could have fished in federal waters but chose not to since it clearly violated the intent of the Council and the Board. I supported your emergency action to close federal waters as the only legal method of halting this operation in absence of an FMP. However, the 90-day Emergency Rule (with a request for another 90-day extension) voted on by the Council will close federal waters until September 11, putting federal waters out of synch with state openings and closures. I believe this is a mistake. Closing federal waters beyond July 1 penalizes all the fishermen who complied with the Council's intent and with State regulations.

Chairman Lauber
April 12, 1995
Page 2

As reported to you by ADF&G staff last year, most of the scallop resource appears to be located in federal waters. From a state enforcement perspective, it is important for state and federal waters to be managed together. This has been your policy with king and Tanner crab and the groundfish fisheries. I fear that unless you modify your Emergency Rule extension, considerable problems will arise when the scallop fishery is scheduled to reopen on July 1.

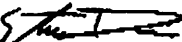
I recommend that you take what action is necessary to bring the federal closure into harmony with the state seasons. Your initial action clearly was targeted at a single operator, but the impacts of your action can severely impact all operators, even those who played by the rules. It would be terribly unfair to penalize the entire scallop fleet for the actions of a single operator. I have been planning all year for a July 1 opening of the scallop fishery. Boats have been overhauled and we need this summer/fall season if we are to financially survive.

I would recommend that you follow this action with direction to the National Marine Fisheries Service to expedite Secretarial review of the Scallop FMP. Once the FMP is in place, the regulatory loophole exploited by others will be gone.

I am also concerned about a rumor that NMFS is considering abandoning all the hard work that went into the Scallop FMP, including the moratorium, in favor of a permanent closure of federal waters to scalloping. If true, I would strongly oppose this idea with all possible means. I own and operate 2 boats here in Alaska and make my entire living as a professional scallop fisherman. This fishery supports more than 400 fishermen and their families and produced more than 1.2 million pounds of scallop meats valued at \$7.5 million in 1994. This is a valuable resource to Alaska and to the United States. There is no reason why this fishery cannot be properly managed. The loophole which allowed others to operate also exists with the king and Tanner crab plan, and yet no one has even suggested that the Council should close all federal waters to crabbing. If it is determined that the State alone cannot manage this fishery, then the Council must step forward and accept responsibility for management. The FMP that we all carefully prepared should be "federalized" and implemented immediately.

Please take action to bring federal waters into conformity with state scallop regulations, and please do what you can to get the FMP implemented.

Sincerely,



for Michael Ireland
Owner/Operator *FV LORRAINE CAROL*



PRESENTATION

of

WANCHESE FISH COMPANY

to

NORTH PACIFIC

FISHERY MANAGEMENT COUNCIL MEETING

APRIL 1995 COUNCIL MEETING

P.O.
BOX 569

WANCHESE
NORTH
CAROLINA
27981

919
473-5001

919
473-5004
FAX

THANK YOU FOR THE OPPORTUNITY TO COMMENT ON THE FISHERY MANAGEMENT PLAN FOR THE SCALLOP FISHERY IN THE EXCLUSIVE ECONOMIC ZONE OFF OF ALASKA INCLUDING THE GULF OF ALASKA, BERING SEA, AND ALEUTIAN ISLANDS.

WE BELIEVE THAT IT IS IN THE BEST INTEREST OF THE NATION, AND THE SCALLOPING INDUSTRY THAT THE NORTH PACIFIC MANAGEMENT COUNCIL ADOPT A FISHERY MANAGEMENT PLAN FOR SCALLOPS IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA. THAT THE MANAGEMENT PLAN SHOULD ALLOW FOR THE CONTINUAL HARVEST OF SCALLOPS FROM EEZ OFF ALL OF ALASKA AND NOT CLOSE THE EEZ AS PROPOSED BY A (NMFS) SECRETARIAL FISHERY MANAGEMENT PLAN, "WHICH ESSENTIALLY WOULD EXTEND REGULATIONS IMPLEMENTED BY EMERGENCY RULE (ER) PUBLISHED IN THE FEDERAL REGISTER ON MARCH 1, 1995 (60FR 1054)"

THIS MANAGEMENT PLAN SHOULD BE SEPARATE FROM THE SCALLOP MANAGEMENT PLAN DEVELOPED BY THE ALASKA DEPARTMENT OF FISH AND GAME FOR STATE WATERS. *ALTERNATIVE 3, OPTION 1*

THE SCALLOP FISHING INDUSTRY POSSESSES ALL THE NECESSARY EQUIPMENT TO COMPLETE A TOTAL STOCK, RESOURCE, AND BOTTOM SURVEY IN ORDER TO PRODUCE THE BEST SCIENTIFIC INFORMATION AVAILABLE. MAGNUSON (SEC 301 (2)) WHILE CONTINUING TO HARVEST SCALLOPS FROM THE EEZ.

THE COUNCIL COULD ADOPT A THREE YEAR TEMPORARY FISHERY MANAGEMENT PLAN THAT ALLOWS THE SCALLOP FISHING INDUSTRY THE OPPORTUNITY TO PARTICIPATE IN GATHERING SCIENTIFIC INFORMATION.

SUCH A MANAGEMENT PLAN SHOULD ALLOW EACH VESSEL;

1. AN ALLOCATION OF SCALLOPS FROM AREAS OF TRADITIONAL HARVEST: SUGGESTED, 200,000 POUNDS PER YEAR, SPLIT BETWEEN STATE 39% FEDERAL 61% AS SHOWN P. 68 FMP NOVEMBER 30 1993:

2. AN ALLOCATION OF SCALLOPS FROM NON TRADITIONAL HARVEST AREAS: SUGGESTED, 200,000 POUNDS PER YEAR, STATE 39% FEDERAL 61% WITH AN OPPORTUNITY FOR ALL MORATORIUM QUALIFIED VESSELS TO PARTICIPATE IN THE GATHERING OF INFORMATION IN THE EEZ AS FOLLOWS;
 - a. COUNCIL AND NMFS DEVELOPE A PLAN TO COVER ALL SCALLOP SURVEY AREAS.
 - b. EACH VESSEL UNDER THE MORATORIUM BE ALLOWED TO PARTICIPATE.
 - c. OBSERVERS ON BOARD ALL VESSELS PARTICIPATING IN THE SURVEY.
 - d. VESSELS ASSIGNED EQUAL PARTICIPATION IN AREAS OF KNOWN VS UNKNOWN RESOURCES.
 - e. VESSELS ALLOWED TO KEEP SCALLOPS TO DEFER COST OF OPERATION DURING SURVEY.
3. AN EQUAL ALLOCATION OF ALLOWABLE BY-CATCH OF CRABS PER VESSEL: AS AN INCENTIVE TO DEVELOP METHODS FOR CRAB BY-CATCH REDUCTION.
4. TO PREVENT LOCALIZED OVERFISHING, VESSELS WOULD BE REQUIRED TO MOVE NEXT AREA WHEN CATCH PER 24 HOURS OF FISHING ARE BELOW 1000 POUNDS.
5. 100% OBSERVER COVERAGE WOULD BE REQUIRED, WITH REPORTING TO NATIONAL MARINE FISHERIES SERVICE AND COUNCIL.
6. GEAR RESTRICTIONS, SHOULD BE 2 DREDGES, 15 FOOT OR LESS, NOT TO INCLUDE REPLACEMENT DREDGES (SPARES), RINGS OF 4 INCH INSIDE DIAMETER, TWINE TOP TO USE SQUARE MESH WEBB TO REDUCE BY CATCH, (SQUARE MESH AN ATTEMPT TO FACILITATE RELEASE OF CRABS).
7. RELEASED CRABS SHOULD BE MARKED BY AN APPROVED METHOD THAT WILL FACILITATE RESEARCH INFORMATION AND PREVENT MULTIPLE COUNTING OF THE SAME CRAB.

WITH A TOTAL RESOURCE ABUNDANCE AND BOTTOM SURVEY AVAILABLE NECESSITY MAY ALLOW THE MORATORIUM BE LIFTED AND OTHER VESSELS BE ALLOWED TO JOIN THE FISHERY.

MORE SUSTAINABLE SCALLOP PRODUCTION FROM THE EEZ UNDER A INDUSTRY ENDORSED MANAGEMENT PLAN WOULD BE OF BENEFIT TO ALL INVOLVED WITH THE PROCESS.

THE OWNERS OF THE VESSEL MISTER BIG, WANT TO CONTINUE PARTICIPATING IN SCALLOP INDUSTRY AND THE MANAGEMENT PLAN PROCESS. THE MISTER BIG WITH A UNIQUE DREDGE HANDLING SYSTEM THAT REDUCES BY CATCH MORTALITY AND AMPLE ROOM TO ACCOMMODATE ADDITIONAL SCIENTIFIC PERSONAL, IS OFFERED AS A RESEARCH FACILITY WHILE SCALLOPING AND PARTICIPATING IN THE PROPOSED SURVEY.

WE REGRET THE INCONVENIENCE CAUSED BY THE ACTION OF THE MISTER BIG, THE ECONOMIC SITUATION IMPOSED BY THE CURRENT SYSTEM OF SCALLOP MANAGEMENT NECESSITATED THE COURSE OF ACTION THE VESSEL PURSUED.

QUESTIONS, AS COUNCIL MEMBERS YOU MAY WANT ANSWERED CONCERNING SCALLOPING IN THE EEZ.

WHAT IS THE HARVEST POTENTIAL OF THE VESSEL MISTER BIG?

WHAT IS THE NORMAL CREW SIZE OF THE VESSEL AND HOW DOES IT COMPARE WITH OTHER VESSELS.

DOES THE VESSEL HAVE THE CAPACITY TO OVER HARVEST THE RESOURCE?

DOES THE EQUIPMENT ARRANGEMENT OF THE VESSEL OFFER AN ADVANTAGE OVER OTHER VESSELS?

WHAT CAUSED THE VESSEL TO TAKE THE COURSE OF ACTION, TO SCALLOP IN THE EEZ WITHOUT AN ALASKAN PERMIT?

SHOULD THE SCALLOPS HARVESTED BY THE MISTER BIG BE DEDUCTED FROM THE QUOTA FOR THE NEXT PART OF THE SEASON?

IS THERE ANY INDICATION THAT A ATTEMPT TO ACCOMPLISH A RESOURCE SURVEY OF SCALLOPS IN THE EEZ BEEN COMPLETED?

HAVE SCIENTIFIC STUDIES BEEN COMPLETED ON THE LIFE HISTORY OF WEATHERVANE?

ARE THE ALASKAN QUOTAS BASED ON WRITTEN SCIENTIFIC STUDIES?

CAN A LARGE VESSEL OPERATE ON THE PRESENT QUOTA SYSTEM?

IS THE OBSERVER INFORMATION BEING USED TO BUILD INFORMATION ON SCALLOPS OR THE BY CATCH OF CRABS?

DO YOU KNOW HOW MANY PAGES OF THE OBSERVER REPORT WERE DIRECTED TO SCALLOP RELATED STUDIES?

WHAT PERCENT OF THE NATIONAL SUPPLY OF SCALLOPS ARE IMPORTED?

WHAT PERCENT OF THE NATIONAL SUPPLY OF SCALLOPS COME FROM THE EEZ OFF ALASKA?

WHAT PERCENT OF THE NATIONAL SUPPLY OF SCALLOPS COME FROM ALASKA WATERS?

CAN A COMPARISON BE MADE BETWEEN EAST COAST SCALLOPING AND SCALLOPING OFF ALASKA AS TO POTENTIAL HARVEST?

DOES THE SCALLOP FLEET HAVE THE ABILITY TO ACCOMPLISH A RESOURCE SURVEY IN THREE YEARS?

COULD A SURVEY OF THE RESOURCE COVER ALL OR MOST OF THE POTENTIAL SCALLOP BOTTOM?

From: WILLIAM B. KOPPLIN

Fax: 907/479-5425

9:55:32 4/17/95 AGENDA D-1

To: MR. CLARENCE PAUTZKE NPFMC Fax: 1907-271-2817

APRIL 1995

OCEANIC RESEARCH SERVICES, INC.

Supplemental

P.O. BOX 102
ESTER, AK. 99725

PHONE: 907-479-5426
FAX: 907/479-5425

TO: MR. RICHARD LAURER, CHAIRMAN

FAX: 271-2817

FROM: WILLIAM KOPPLIN, OWNER OF "NORTHERN EXPLORER"

DATE: 17 April, 1995

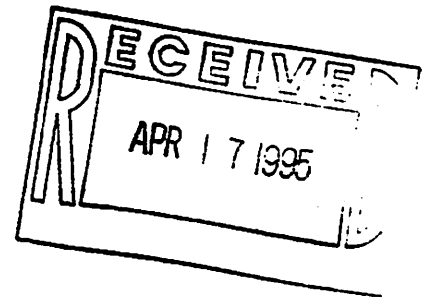
NO. OF PAGES: ONE

Dear Mr. Chairman,

I want to comment on the proposed NMFS scallop fishery management plan. I do not feel that closing the fishery is any kind of management plan. Not being able to fish for our limited quota this year will ruin myself, my family, and the crew members that work for me. I feel that NMFS should be able to come up with a plan to allow the fisherman who abided by the intent of the law. Why should we be chastised for the deeds of one vessel. If this is how NMFS reacts to this loophole, they should shut down the King crab and ling cod fisheries also.

I strongly urge you to consider some of the alternatives that will be presented during the council meeting and to reject the total closure of the fishery.

Sincerely,
##include=c:\wp51\macros\sigwk.pcx l=1 r=175:200
William Kopplin
President



FAX FAX FAX FAX FAX FAX FAX FAX FAX FAX FAX FAX FAX FAX FAX

NOVA Fisheries, Inc.
5309 Shilshole Ave Northwest

Seattle, Washington 98107 USA

FAX 206.781.9011

TELEPHONE 206.781.2000

AGENDA D-1
APRIL 1995
Supplemental

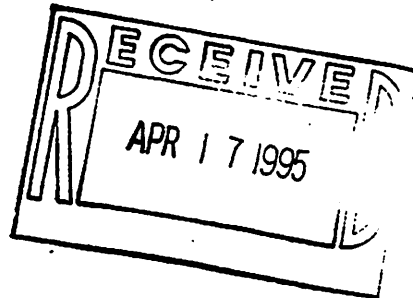
April 17, 1995

North Pacific Fishery Management Council

Attn: Richard B. Lauber, Chairman

Dear Mr. Chairman:

Re: Alaskan Scallop Fishery



As you may recall from my testimony at previous council meetings, Nova Fisheries is the sales agent for 2 of the vessels in the Alaska scallop fishery, the F/V Pursuit and the F/V Provider.

It has come to my attention that the opening of the next scheduled scallop season in Kodiak and the Bering Sea may be delayed as a result of the transgressions of one vessel, Mr. Big. Over and above the economic hardship the delay in opening would cause our company. I am extremely concerned about the economic impact on the Pursuit and Provider and their crews. It is patently unfair that these people who live in Alaska and whose livelihood is solely based on the scallop fishery, should be forced to suffer because of the actions of one renegade boat. Our boats have worked with the new limited fishing seasons and have tried to preserve the resource in the face of more and more vessels coming into the fishery as a result of overfishing on the East Coast.

Please find a way to take care of the people working within the system. The economic survival of 2 of the original boats in the fishery is at stake. I urge the council not to delay the opening of the new seasons.

Yours Truly,

A handwritten signature in cursive script, appearing to read "Blair Culter".

Blair Culter

WELLS ICE & COLD STORAGE

Fax : 804-898-4356

Apr 11 16:

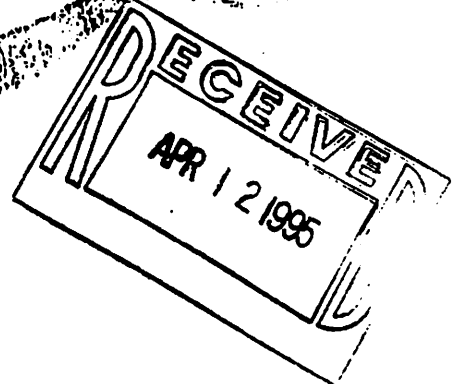
WELLS Scallop COMPANY

POST OFFICE BOX 600 • SEAFORD, VIRGINIA 23695-0600

Bill Wells, Jr.
Bill Wells III

(804) 898-8812

April 11, 1995

Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Chairman Lauber and members of the NPFMC:

I am writing this letter to emphasize the importance of the Alaska scallop fishery to me personally and to the country as a whole. The Alaska scallop resource is one of the few underdeveloped commercial fisheries which remain in the United States. It has had a sporadic history where in the past the resource provided a fishing opportunity when groundfish or crab stocks declined. In the last 8 years, the resource has supported a number of full-time scallop fishermen with custom vessels and gear. Most scallopers originated from the east coast and all of us now consider Alaska our homeport.

In my view, evidence generated from the commercial fishery suggests that a considerable scallop resource remains unutilized in Alaskan waters. Catch data indicates that most of the scallop grounds are found in federal waters of the EEZ. I came to Alaska with my vessel with the sole purpose to play a part in the development of this fishery and to assist management with the design of a rational fishery management plan. My first priority was to go fishing and this is our third season. My second priority was to fully participate in the Council and Board of Fisheries process in the development of a FMP. As I have testified in the past, I believe a federal FMP is necessary for scallops and have supported the Council's plan. I am very disappointed that a year ago the Council voted to approve the plan for Secretarial review and yet the FMP has yet to leave Juneau.

I am aware that one of our fellow fishermen chose to "test the system" by fishing in federal waters after the January Yakutat season had closed. I too sense his frustration, knowing as I do, that more resource exists beyond what is currently made available to us under the State Harvest Guidelines. This is not an argument over interpretation of data. It is an argument conducted in a vacuum devoid of data.

Now I have learned that the NMFS is considering a complete closure of the fishery through 1996. This is indefensible and totally unacceptable. The arena for scallop management must remain in Alaska, not Washington D.C. We must stop the misuse of industry funding for observers in Yakutat and use

CAROLINA ROY, INC.
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CAROLINA CLIPPER INC.CAROLINA GIRL II, INC.
CAROLINA LUREAN, INC.CAROLINA LADY, INC.
OCEANIC SEAFOOD, INC.CAROLINA TARHEEL INC.
CAROLINA PRINCESS, INC.

WELLS ICE & COOLD STORAGE

Fax : 804-898-4356

Apr 11 16:39

industry funds for a State/Federal formulated survey of Alaska waters. And we, industry, have got to realize we must all pay our fair share of this survey and live with the results. The State and Council must also realize that data already generated by industries must be analyzed and used. Finally we must all realize that these surveys must include areas currently closed to scalloping where anecdotal information from fishermen in other fisheries maintain that there is no significant by catch and scallops are present in large abundance.

While I know that regulatory loopholes probably exist in every FMP, as fishery partners I support the idea of trust. All regional councils routinely approve regulations which take some time to implement. They have trust in the industry, just as we in the industry have trust in the council process and that the decisions are fair and reasonable.

I have trust that the emergency action taken by the North Pacific Council in February to close federal waters to scalloping was made for the right reasons; that being to prevent commercial scalloping outside the state's published seasons. The problem is that the scallop seasons statewide are scheduled to open July 1 and that the automatic 90-day extension will essentially close most of the scallop grounds to the fleet.

The entire fleet have made their plans and purchased equipment with the expectation that the fishery in all waters would open July 1. No one expected a vessel to continue fishing after the January season, nor did they foresee that federal regulations would be in conflict with state regulations. I recommend that the Council amend their earlier action so that the extension expires on July 1. Commercial fishing, whether it be for scallops or finfish, is better off Alaska during the summer than the winter. Waiting until September 11 for the Emergency Rule to expire forces the fleet to fish most of the harvest guideline in the fall when weather will get worse. Such a delay could also force a situation which has occurred in other states where federal waters are open to fishing while state waters are closed. This situation creates a number of enforcement problems.

I also recommend that the Council direct NMFS to expedite the draft FMP and the accompanying moratorium through all the remaining stages of review. With regard to the permit loophole which was exploited this past winter, I recommend that the FMP be modified to require a federal permit when fishing scallops and that under the framework authority of the plan that ADF&G and NMFS publish jointly season dates and harvest guidelines. Such a "house-keeping" amendment could similarly be developed for the Council's other FMPs.

I plan on attending the April meeting and will be available to further expand on these points and answer any other questions that the Council may have.

Sincerely,

Bill Wells

FV CAROLINA GIRL, FV CAROLINA BOY,
FV JACQUELINE AND JOSEPH

RECOMMENDED ELEMENTS OF A COOPERATIVE GOVERNMENT-INDUSTRY SCALLOP SURVEY

Prepared by: Steve Davis, LGL Alaska Research Associates for Wells Scallop Company (Owner/Operator of 3 Alaskan vessels), and Misty Seas Company (Owner/Operator of 2 Alaskan vessels).

Background

Following the Spring 1994 meetings of both the Alaska Board of Fisheries and the North Pacific Fishery Management Council, initial discussions were held between LGL and representatives of the scallop industry about "the next logical step" in the evolution of scallop management in Alaska. At that time, both the Board and the Council had just addressed the moratorium issue (i.e. "who's in, and who's out"), the Board had adopted a crew size limit and a prohibition of automated shucking machines, and the Council had approved a framework FMP which would delegate much of the day-to-day management responsibility to the State of Alaska.

One unaddressed issue which remained in the minds of industry concerned the issue of quota. Most fishermen believe that there exist greater harvest opportunities for scallops in Alaskan waters. These opportunities could be in the form of unexplored grounds (such as in the Bering Sea), or by higher exploitation rates where appropriate. Both possibilities are hindered by the lack of good scientific information on the scallop resource.

Currently the major gaps in our knowledge are:

1. We know nothing as to the size (ie. biomass) of the scallop resource.
2. We know nothing as to the population structure of this resource (are we looking at 1 or several discreet stocks?).
3. We know little of the scallop life history and growth patterns.

To achieve the objective of scientifically defensible quotas, managers need to know stock size and structure in order to determine biologically sound exploitation rate strategies. This information is critical if the Board and the Council are to seriously consider departing from current quotas/harvest guidelines (which are based on an analysis of historical catch data; see Kruse 1993).

What is clearly needed is a comprehensive scallop survey. Results from this survey could be used to determine whether area quotas are appropriate and if the harvest guidelines should be increased, decreased, or remain unchanged. This survey would provide information on habitat type, crab bycatch areas, etc. which could similarly be used by managers in determining areas for closure and appropriate bycatch limits.

Preliminary discussion with scientific staff of the Council, NMFS, and ADF&G over the last year suggest that it is unlikely that either agency has the funds necessary to support such a survey on its own.

LGL's recommendation to the scallop industry was to consider jointly sponsoring a survey with the government. Such a survey must:

1. Be scientifically designed, using proven statistical methods.
2. Be performed following a specified grid of survey stations, where standardized dredging methods would be employed.
3. All vessels of the scallop fleet would be provided an opportunity to participate in the survey. Each vessel would be assigned predetermined survey stations and would carry fishery scientists and/or observers.
4. Financing the survey would be a cost shared by both government and industry. The relatively small size of the scallop fleet makes the cost of the survey too high to bear alone. LGL recommends that the agencies provide start-up survey funds. Each participating vessel's marketable catch would be sold and put into the scallop survey fund. At the end of the survey, the Fund would be split equally among the participating vessels. Should funds be generated which exceed the cost of the survey, those funds would be directed to the agencies to support survey analysis.

Such a funding policy would ensure that those vessels assigned to areas which prove to provide little or no marketable catch are fairly compensated. Some vessels would by chance, generate considerable income. Applying all survey proceeds into a general fund assures that there are "no highliners" and that no "commercial fishing" for the sake of making money has occurred.

5. This conceptual survey plan differs from ADF&G's "exploratory fishery policy" in that it will produce data that can be used to address the gaps in our knowledge described above.
6. The cooperative survey is a "win-win" for both managers and the industry alike. The agencies win because they receive scientific information that given current funding constraints they could not get any other way. The industry wins because they finally know the size of the resource and can make business decisions based on that information. The data would enable an evaluation of quotas, closed areas, bycatch limits. It would provide both the Board and Council with the information it needs to further develop the FMP.

Prior to the recent events it was the intent of LGL to fully flesh out the conceptual design of a cooperative survey, and submit it to both the industry at-large and ADF&G for review. It was planned that during the course of the year, ADF&G and scallop fishermen could meet to discuss the technical design of the survey plan. Such a plan was to be presented to the Board next March when it is scheduled to again address scallop management. It was envisioned that the survey would be conducted outside the normal fishing seasons.

Now, with the possibility of no scallop fishery being allowed in federal waters later this year, perhaps an accelerated schedule could be developed whereby the agencies and the scallop industry can rapidly move forward to implement a research scallop plan for 1995. A Council committee, comprised of agency and industry representatives could be assembled to meet as soon as possible to discuss survey design and logistics. Such a research plan could be presented to the Council by the June meeting. A research plan could provide some income to fishermen that otherwise would not be available.

Wells Scallop Company

FV Carolina Girl
FV Carolina Boy
FV Jacqueline and Joseph

Misty Seas

FV Lorraine Carol
FV Fortune Hunter

**NPFMC COUNCIL DISCUSSION OF SCALLOP MANAGEMENT
AGENDA ITEM D-1
APRIL 20, 1995**

Tape 14

Lauber: Council come to order. We're still under the Scallop Management agenda item and as announced yesterday, we had concluded all the people who had signed up to testify. Is there anyone who did not testify yesterday, that did not have an opportunity to testify yesterday that is here today and would like to testify on scallop management? No one is signed up, Helen? Anyone here to testify, step forward. Alright, that concludes the public comment section of the agenda item. Yes, Ms. Behnken.

Behnken: Do we have the AP motion in writing yet, from their minutes?

Pautzke: Helen do you have the AP motion in writing?

Lauber: Did you wish to wait for that and use that for the basis of your motion?

Pautzke: I can refresh you on it if you would like.

Behnken: It seemed to me they were on the right track there with what they were doing.

Pautzke: They had four or five steps here, and maybe Helen could go back to her notes too because I didn't catch everything they said about opilio and bairdi, but anyway one of their first sections was they wanted, by unanimous vote as a matter of fact, they said send the interim FMP that would close the area in the EEZ, send it off for Secretarial review. Secondly, they wanted to urge Congress to amend the Magnuson Act to delete that management void we have out there. Thirdly, they wanted to release the draft FMP, federalizing Category 2 measures, to public review, I assumed so Council can take action in June so it would be in place sometime in early 1996 when we open seasons. Then they had an item on opilio and bairdi bycatch rates, but I'm not comfortable telling you what all that was. Maybe we can get to that.

Lauber: What's the pleasure of the Council?

Pereyra: Mr. Chairman, I have a question if I may of NMFS. If the fishery were to reopen whenever in August, when the emergency rule expires, State of Alaska regulations would still pertain out there. If, at some later date, whether it be the first part of September or whenever, the State of Alaska were to close a certain area because of reaching some guideline harvest level, would NMFS be able to concurrently pass an emergency rule or the Council be able to concurrently pass an emergency rule to close that area so that we could mirror whatever the state was doing as they progressively went through the rest of the season?

Pennoyer: Mr. Chairman, I don't think that would be different enough from what we've already done to qualify as a new emergency rule and I don't think we can do it this year.

Pereyra: Could we in emergency change the dredge size down to one foot or something like that for an area?

Pennoyer: I think it would be assumed to be just in reality the same type of measure and I don't think anybody would let us do that. In other words, we couldn't use a surrogate that closed the fishery but that didn't actually close the fishery. I mean maybe if the dredge went down to five feet instead of six feet, four feet. You're not going to get where you want to get by just coining something else.

Lindemann: Mr. Chairman, the Council would have identify some new emergency for whatever emergency rule you wanted to pass. If it was the same emergency, and you were attempting different alternatives to address that emergency, there's a problem with that.

Pereyra: How does the area close then once the emergency rule expires?

Pennoyer: Only if you adopt the current plan that's been put in front of you.

Krygier: To get this rolling, I think we ought to take the first step and adopt the AP's first recommendation which is to close the EEZ.

Pennoyer: Second.

Lauber: Would you care to speak to your motion Mr. Krygier?

Krygier: Well, I think most of the Council members here are aware of the fact there's a situation where if we don't keep the EEZ closed until we can accommodate the problem with unregistered state vessels, then there will be a hiatus at the end of the 180-day period so as to encourage further unrestricted fishing in the EEZ on scallops so development of this FMP is important to take care of that while we determine an avenue to allow fishing to occur.

Lauber: Let me first ask you a question and then you may respond and also make your statement. Your suggestion is that we have the closure for two years, that would be two years from presumably the effective date which apparently will be August 28 or maybe shortly before that. In any case, it could run two years. So it would be getting close to 2½ years if we did nothing. I presume the reason for that is that you're concerned as to whether or not we can do something in the short period of time. If we act timely, in other words, if we start working on an alternative or an amendment of some sort, that would open the season earlier, do you think that because we have the two-year time, and there would really be no one's back to the wall so to speak, that this would draw it out and take longer for our plan to be adopted? I am concerned that we may keep this fishery closed and we obviously heard a lot of testimony yesterday as to hardship, even the emergency rule is going to create a lot of hardship, but extended for any great length of time is going to wipe people out. Would it be advisable for us to not go for two years, but say go for one year and then, in fact, it's really 1½ years so that we would then have some inducement to act?

Pennoyer: Mr. Chairman, that question has a lot of ramifications to it, not the least of which is the Council prioritization of workload of both agencies and your own staff. Obviously, when it was suggested for two years, it wasn't that we thought it was desirable for the fisheries to be closed for two years. Clearly, the Council and NMFS up until now has been willing to underwrite most of the state management program and we had to pass a plan to that effect but we're moving down the track toward delegation of authority. So none of us have clearly said that the desirable thing is to close the fishery. The two-year period was simply our shot at just giving you time to figure out what you're going to do. If you want to make it one year, that's fine. You have not yet really crossed the bridge at what it's going to take to manage this fishery and what that's going to result in prioritization and deletion of resources on other projects you've got. So I guess my answer is yes,

I think one year is fine. That is okay. All we were trying to do was give you the ability to work within some time frame. If your indication is that it's a priority to get this done by a certain date, and in fact, we're going to tell Clarence's staff and my staff to not to do something else, then that's the date you're going to pick. Our assumption was it wouldn't take two years. I think a year is fine. As you said basically, a year and a half. The other part of the statement I was going to make in addition to what Mr. Krygier said was that the reason for this action as you said an unregulated fishery, I think the concept is unregulated – no reporting requirements, no closed areas, no gear size, no efficiency, nothing. There is nothing out there. Whether it's one boat, you can make a case still that one boat went off the south end of Kodiak you might find yourself with a different type problem, but if it's one it could be more. You have no moratorium in effect, you have no regulations at all, so that's the specter of not doing something. That's the reason Mr. Krygier made the motion and I seconded it.

Pautzke: What I'm being told by my principle staff and from the region is that the writing of the plan and the regulations to federalize it is far enough along, you could take final action at the June meeting, I think is what I'm hearing from them. It seems to me that we will be in a position to launch the next amendment which will make for management of the fisheries at the June meeting, so I don't think it's a two-year problem, I think it's a one year problem at the most.

Lauber: Dr. Krygier, would that cause you to change your motion?

Krygier: The one-year fix on my portion of the amendment or my portion of the proposed FMP is fine. What I'm not certain about and Mr. Pennoyer and I have been talking about how, if we federalized all the regulations for all areas, what can the agencies do once you federalize those regulations. The AP and other folks are looking for a fix to go back to the way we were. We're trying to look at between agencies how do we manage this if you pass the second step. I don't think we're clearly there as far as staff capability between their staff and ours. We're still unsure of where that leaves us as far as a program if we act in June with what's on the table as the second proposal which is federalizing all of the earlier FMP amendment we're working on. I don't know whether or not we would be able to say that is the product that we would like to offer in June or not.

Pennoyer: I think you need to do things in sequence. First action is, do you want to go along with this plan and go ahead and have the closure and how long it should be. I don't think a year and a half is a major issue. There are other issues here that would be more major as we get into them. The content of the plan as Mr. Krygier says, if you're going to do some research things and so forth and coming up with resources to do it. I think the first thing is this, I don't think a year's a problem, in essence a year and a half or year and a third. The second step of what we can do by June, I think is something as Clarence has said that we're going to work at. There's some legal questions of when we find out how much work has been done federalizing some of those regulations, we don't think is a big problem. * (change to tape 15 here) There may be something there we haven't actually dug into that when we get into it, but I think we can try that. That doesn't answer the question of what happens if the Magnuson Act gets changed and we really do go back and try to do a delegated plan. We have to sort of start again. You'd have a federalized program in place we'd have to manage, then you'd shift back to something else. It's a little awkward but I don't know any other answer to it. I think if we proceed down the path that this, if you vote for it, we proceed down the path that amendment one with basically taking Category 2 measures and I assume all of them, and federalizing. The other issue is if you somehow here decide you want to make some changes in that throws the schedule into a cocked hat (?) requiring analysis and other things. If you take the plan we've got now and take the Category 2 and federalize them, I think we can probably work with that. I think that's how we go.

Barker: I guess the question is if we're trying to cover a hiatus that's going to occur on or about August 28, that there isn't a method to put a date specific begin time for this interim plan and if the Council wanted to entertain something like an October 1st start date, that might give the opportunity for a short fishery in that interim period before the closure took effect and that would mitigate . . .

Pereyra: Mr. Chairman, I'm still not willing to buy off on this answer that there's no way that we can have this fishery open up by this fall and somehow be able to control it. Why can't we framework the area closure aspect of this and actually delegate the NMFS to go ahead and make those closures based upon the advice they would get from the Alaska Department of Fish and Game?

Pennoyer: Mr. Chairman, there is no plan to framework. There is nothing out there. Nothing exists. There's no regulation in federal waters, there's no skeleton to hang those closures on, there's nothing. You're starting basically from the situation where there's no regulation and nothing in place, except by doing an emergency rule as we did this time, which we can't do again, there is no way to do that.

Pereyra: Then please explain to me, maybe I'm being a little bit dense here which is not unusual this time of the morning for me, but please explain to me if this emergency rule we have now expires the 28th of August or whenever it does, what closes the fishery then?

Pennoyer: This would.

Pereyra: Okay, then why can't that interim have, rather than be a total closure, have it be some sort of a framework decision that's made by the NMFS?

Pennoyer: We could do that but it won't happen by August 28th. If we do anything more than the simple approach that's here, you're talking about a delay of some significant amount of time. I can't predict what it would be but you're going to put a plan in place then that has other things in it. Frameworking is not something you set up easily. It requires analysis, it requires specification of how you're going to do it. We tried to framework hotspot authority at one time if you'll recall. I thought it was a relatively simple thing to do, but it turned out we had to actually practically go down to the gnat's eyelash of the criteria. You had to practically put the closure in the book to make it happen. You're not going to do that by August 28th. We've scratched our heads on this and the best we could come up with is this approach, if you don't want a hiatus. Now, if you want a hiatus, then the Council just doesn't vote for this and we'll have to decide what we have to do with it. But right now, you have no regulations August 29th.

Krygier: Mr. Chairman, Dr. Pereyra. I don't think we want to get into the position of a regulatory hiatus. We do have at least two fisheries already. A regulatory hiatus means that we can have a reoccurrence of what we saw back in February. We have already taken the GHLL from two districts. The one area we've actually surveyed, made population estimates and have a guideline harvest for that area based on biomass, is the area they went into and took twice the GHLL. If we had individual overfishing by area, they would have far exceeded that. That area would be reopened. The area in Yakutat which is another set of beds, would be reopened with a regulatory hiatus. It also means that all of the areas that are protected with crab bycatch, there is no crab bycatch regulations. If we heard anything from the AP, the biggest concern was the bycatch rates. There are certainly areas that we manage specifically with those bycatch rates, and it's a very intensive day-to-day management of that. Those rates can get dramatic if they get in the wrong area.

Pereyra: I'm not certainly going to question the necessity to provide protection to these beds that had been inadvertently overharvested but my concern is what do we do about the independent vessel owner

who doesn't have 4 to 5 vessels he can use to cushion the possible tying up of a very specialized vessel for one or two years. What are we going to do about these crewmen – that's their main occupation. Do we have some sort of a disaster relief program that we're going to tie onto this in amendment form that's going to allow some sort of carryover for these people. The people that we're impacting by this approach are the very ones who can least afford to have it hit them. A corporate vessel owner who's got four or five vessels, he possibly can cushion this in some way. Maybe he's got the ability to borrow funds and so forth. Some family that's got one vessel and this fishery has been a marginal fishery for the last several years, we know that, they don't have any reserves. I think we have to keep that in mind at the same time. I'm not trying to downplay the biological significance of what's been going on out there. There's another side to this and I think the Council has to keep that in mind. I'm trying to desperately find some way in which we can provide some sort of - what if we delayed the implementation of the interim until sometime after the 28th of August. Does that offer some opportunity for a short period of time, for a couple of weeks. We don't put this into force until the 15th of September so you know you're going to have a two-week fishery or something.

Pennoyer: Recognizing what Wally says is true and recognizing the fact that normally if we hadn't had any of these problems, the fishery would have opened and there would have been some harvest. I don't think it's anybody's desire to not go harvest some scallops. We're trying to find a way to do it. I guess the best I can tell you Wally, we can come back in June with this Amendment 1 and options for you as to whether you can fast-track part of it and what that means. I'm just telling you that even doing it on the schedule you've got is fast-tracking. Your normal plan amendments are a year at least from conception to implementation and that's not very complicated ones. We are going to do it in basically six months on this process. The only way we could even do that is the fact that you've done a lot of background stuff on a similar plan already. If you allowed the two or three weeks that you're talking about to occur and didn't implement the thing until later, for two or three weeks you've got no bycatch regulations, you've got no closed area regulations, no reporting requirements. You know I can't tell you it's not going to work out just great, maybe everybody just goes out and fishes in ten square miles of ocean, but you don't have any control over that. You have no ability at that stage to reimplement an emergency rule if something is happening you don't like. You have a lot of trawl closed areas, you've got a lot of areas closed to trawling because of bycatch. There are a lot of things out there that aren't going to mirror whatever you're doing on scallops for whatever period of time you leave it open. I don't know the answer to that.

Samuelson: I share a lot of the concerns expressed here this morning. I wish it was a videotape where we could rewind and start all over. I'm not too happy in the position the Council has put itself in as far as scallop management goes. Starting with the moratorium date and the control date, we had very little biological data and we allowed 15 boats into that fishery. Department of Fish and Game started monitoring a set of guideline harvest levels in 1993 and started getting data based on CPUE and size. We don't have any biological information as far as I'm concerned on that stock composition out there. However, we set a control date and allowed, I believe, we were shooting for 11-12 boats and now we're up to 15 boats if I understand it right. I've heard public testimony from participants in that fishery that we made it an economically unviable fishery for the participants. That's contrary to what the Council set out to do. We never did want to make this fishery a welfare fishery and put everybody on the welfare rolls. We've heard testimony and we're talking here of possibly shutting the fishery down, trying to minimize the impact from two and a half years to a year and a half. As Mr. Pereyra stated, these are specific vessels that are built to only interact with that one fishery, not other fisheries. Let's just back the whole mess that we're in up and start all over because I'm not too happy with what we have on the table. There's too many fishermen in this fishery. Potential of high bycatch, we have very little biological data. I don't know where the Council wants to go with it but

I'm not too happy where we're sitting right now. I'd like to explore about going back and visiting that control date.

Pennoyer: Mr. Chairman, we can talk about that. There are three steps here. There are these two and maybe three. One is the question of what you want to do relative to August 28. Now that doesn't affect any of the past things you've done. It's simply a question of whether you're going to close until you do something else. Then you get to the stage of what you want for Amendment 1 to whatever this plan is. Amendment 1 can be all the Category 2 things. You could add some new things like you're talking about which require a different analysis and may or may not delay the implementation of the new plan significantly. We'd have to look at that. There are the questions you also asked about research and management that Earl brought up earlier that we're going to have to wrestle with. How do you do this, how do you get the data, do you adopt one of these industry survey discussions we've had, do we monitor it . . . some of these are coming up too, but first you have to decide what you're going to do with the August 28 date. Regardless of what you do with control dates or anything else, that's kind of the first step you have to take. Then after that, you can decide where you want to go with your first amendment to the plan. Either just what the AP recommended or more things like you're talking about - going back and reinventing the thing.

Tillion: Mr. Chairman, I think we should move forward on what the AP recommended as far as the closure goes. I hope that our Congress moves and gives the state authority for a closure, in which case, we could lift it and go on. I think with a little pressure, we might be able to get that. As far as what Mr. Samuelsen was saying, I don't like that control date. I don't think that it would have any impact on how things went. We let too many boats in. We modified the control date. If somebody moves to take it back and do the original motion, which is the one the state supported, one that would have 11 or 12 boats at the maximum in the fishery. I certainly would support and I doubt if that's going to make any difference on the analysis because it was in that, you know the work was done with those numbers. What I'm looking at is the fact that we might very well pass a scallop plan that doesn't solve the problem of short seasons and overharvests. Well, we could just shut it down but you're still facing disaster for the fleet because we're letting too many of them chase too few scallops. I think that, as the motion is on the floor to move, I, Mr. Chairman would feel that we might as well move the full two years and hope we can get the doggone thing opened again as soon as possible and we have that slack which telegraphs to those that might be interested in coming around from the east coast that there isn't any hole here in which to come into. Then I'd be for setting a date that gives us the amount of scallop boats that can make a decent living at it and move forward with our plan.

Lauber: My understanding of the motion now is that it has been changed to one year.

Behnken: That was my first question - to clarify that it's one-year, the motion? Yes?

Krygier: One year from August 28 gets us through about a year and a half of closure.

Behnken: One more question, Mr. Chairman, if I could. Will there be any openings, I know there would be limited small openings, but will there be any openings during that period in state waters?

Krygier: State has plans to open the areas where there still has GHM remaining. That would be the Kodiak area, the Aleutians area and probably restrictedly on the Alaska Peninsula. Within state waters in the Bering Sea, I don't think we're going to open any of that area.

Lauber: Mr. Mace.

Mace: Mr. Chairman, Earl approximately what percentage of the available harvest would be available to the people in the state waters?

Krygier: In the Kodiak area, that would include Shelikof area where there are some beds, I'm not sure off the top of my head how much of those are available in state waters. As you go further down on the peninsula, I know there's some opportunities in state water there. Out in the Aleutians there is some opportunity. As far as the actual percentage in numbers, I didn't bring that spreadsheet with me. I know that most of the areas that have state beds that are fairly productive are the Yakutat, Kayak, and Aleutians. The area around Kodiak, most of the beds that they have, usually in the Kodiak district they've worked on the offshore beds which are the most productive. There may be some marginal areas they could get at within the greater Kodiak area, but crab bycatch is going to be the main concern there. The same thing with the Aleutians. The main area we know there are scallop concentrations on was closed to protect king crab. there are some opportunities, but not many in that area. The Aleutians at one time produced a fair amount, but it's a long ways out and very narrow.

Mace: Not much, in other words.

Krygier: No, not much.

Lauber: In the draft plan on page 11, there's a 1990-94 list of harvests in state waters and federal waters. Apparently, it was less than 14% in 1994, and about 24% in '93, and went as high as almost 75% in '92 was harvested in state waters. I don't know if that's any indication of what could be taken or not.

Pautzke: Though we've been speaking in terms of a closure for one or two years, it seems to me that what we have here realistically is that you have some openings that are going to take place in state waters later in '95 and then if we pass off on the other plan, Amendment 1 in June, we're assuming that 's going to make it in place by January 1, 1996. There would then be your normal openings with GHs and so on and so forth at the early part of '96. Those would be your next two fisheries. The state waters for the rest of '95 whatever they have available. I'm assuming the plan would be in place and we would have our regular fisheries in 1996.

Lauber: Alright, is there any other discussion? Are you ready for the question on this. The motion is basically the AP with motion that we send out the draft fishery management plan, the only change was the amendment that the duration would be one year instead of two years from the effective date.

Pennoyer: Mr. Chairman, one correction. It's not send it out, it's send it to the Secretary. It's going to the Secretary.

Pautzke: Does that go in this Friday? Is that when you were thinking of it. I mean is it that quick of a time line? That's what I heard.

Pennoyer: Today is Thursday. We have to get the letters and stuff. It will either be Friday or Monday.

Lauber: Are you ready for the question? Is there any objection to the motion? Hearing none, it passes. Alright, the next item on our agenda was item C-2.

Pautzke: We just passed the AP, I think we just passed the first part. Do we want to go through instructing the staff to send out to get the federalized plan ready for a June final decision and there's a couple other items here I think you may want to take up.

Tillion: Just a question before we start any motions, to Mr. Samuelson, were you going to, before we send this plan back, have a vote on that control date to try and tighten things up a bit? Or, are we ready to do it?

Pennoyer: It's not in this plan. This plan has nothing to do with it.

Tillion: This plan has nothing to do with the control date?

Pennoyer: No. That's your second step.

Pautzke: That will be your next iteration.

Tillion: Okay.

Pautzke: Now if you want, another control date of some sort, to be available for public review, since we're going to try to get this amendment one out before the June meeting, you probably want to get it on the table, I think, so we can at least notice the public that you're thinking of a different control date in June other than you have right now.

Hegge: Just a comment on the control date. I think if we remember back when we put that in, we had a lot of discussion. At least my conclusion at the time was that we were trying to restrict the fishery with a moratorium. We were trying to stop new entrants in the future and that the moratorium was giving us time for if we needed to pare down the number of entrants or take whatever measures were necessary.

Tillion: I had the unfortunate experience of having to sit back there in the audience during that debate that the original control date proposed would've covered everybody who had delivered, but not those that were in transit. The date you adopted covered vessels that were not yet fishing. So you made it a lot broader than necessary to cover those that had delivered.

Pereyra: Amendment 1, is this considered to be a Council-prepared amendment or is this a Secretarial-prepared amendment? My question is, according to the Magnuson Act, the Secretary can prepare an amendment if the Council hasn't acted appropriately and I'm wondering why it wouldn't facilitate things if we just had it be a Secretarily-prepared amendment rather than a Council prepared amendment and just send that right on to the Secretary the week after the plan goes to the Secretary, so that they're kind of running on the same track, 5 or 7 days behind each other, so that we can get the plan in place. Then there's the authority to be able to open the fishery as appropriate, or delegate to the state so the state can open the fishery as appropriate.

Pennoyer: I guess your question is could we start a Secretarial amendment now and not wait until June. Is that basically your ????.

Pereyra: The Magnuson Act provides some latitude if in fact the Council's have failed to take appropriate action and I think I could very clearly make a case that the Council did not take appropriate action. The Council knew that there were vessels that were not registered in the State of Alaska that would be operating in the fishery out there. The Council knew the tendency was this possibility and it occurred. It seems to me that the Council did not take appropriate action and it's only reasonable that the Secretary, in view of this fishery management crisis, takes appropriate action. Then the Council has the opportunity during the 60-day comment period to provide its comments and input into the process. That would tend to facilitate it.

Lauber: Wait a minute. My understanding of that section is that the Secretary can act where the Council has failed to act after a reasonable time. What you seem to be saying is that we should have a Secretarial plan because we have acted but you or others or maybe the majority of the Council at this moment, doesn't like what it did. It's not that we didn't do something, we did do something. We did act. You or maybe others don't like what was done. That doesn't allow the Secretary to do anything. Certainly not come up with a plan. The Secretary could reject it and send it back to us because of some reason but I don't think the Secretary could come up with the plan. He would have to send it back, say I don't like it and fix it.

Pennoyer: Mr. Chairman, you raised a good point because you certainly cloud the issue even more when you have to justify why the Secretary did it instead of the Council doing it. Particularly, if it contains something like a moratorium which is a fact of limited entry. That's not going to be easy, as a matter of fact, I don't think the Secretary can . . .

Pereyra: I'm not talking about the moratorium, I'm talking about the amendment to this plan . . .

Pennoyer: Even leaving that out, if the Secretarial plan is sent in, it doesn't change the preparation that is required to do the Secretarial plan. If it's going to take us until the June meeting to get whatever work done necessary to federalize these regulations by staff anyhow, we'd have to do that anyway. I'm not sure practically, you're talking about no more than a week or so or maybe less than that. Practically, we would still have to sit down and write the plan whether the Secretary submitted it or you submitted it and we wrote it so you could submit it. Our staff still has to do much of the same work and it's going to take about the same time frame. I don't think you jumpstart it that much. On top of that, I think Chairman Lauber is quite correct. I think you have an added measure of uncertainty as to whether that would hold up or not by asserting that the Council failed to take action when, in fact, the Council is considering action and they're in the process of it.

Mace: Mr. Chairman, I agree with you. I think that the Council proceeded in good faith, in a timely manner and I certainly don't want the Secretary involved in jumpstarting our actions. Let's stay with the course that was taken.

Behnken: Mr. Chairman, I move that we release the Draft FMP to the public with final action as soon as possible, as recommended by the AP.

? Second.

Lauber: It's been moved and seconded. Any further discussions or any discussion?

Pennoyer: You mean the AP recommendation of making Category 2 measures Category 1 and just carrying that part of the plan forward?

Behnken: From my understanding of the issue, that's what we need to do, Mr. Pennoyer, to move this thing as quickly as possible so that fishing can resume. If that's the best way to get there, then that's my motion.

Pennoyer: Okay.

Lauber: Ready for the question? Is there any objection to the motion.

Krygier: Clarification? This includes the other AP recommendations, the crab bycatch rates . . .

Lauber: No, that's not my understanding.

Behnken: No, Mr. Chairman, I was going to move, or someone can move, the bycatch caps separately.

Lauber: Is there any objection to the motion.

Pereyra: You know I understand the elegance of having a number with all kinds of numbers to the right of the decimal point, but I think it would probably be reasonable to round it to something that's pretty close to that number.

Lauber: We're not on that issue. Restate the motion for the record so we understand what we're voting on here.

Pautzke: The AP recommends that the Council release the draft FMP to the public with final action as soon as possible so the resumption of fishing may be considered. The FMP should include federal regulations to govern Category 2 management measures.

Lauber: Any further discussion?

Pennoyer: Mr. Chairman, again for clarification, so it's the existing plan that would have delegated to the state except we make Category 2 into Category , no other changes at this time? Thank you.

Lauber: Is there any other discussion?

Krygier: Within the plan here, what we're releasing is the basic layout here on page 3 of the action plan that sets up the two categories moving everything from Category 2 to Category 1 and federalizing those. Those are the only alternatives, or will there be alternatives that we can pick and choose in June out of these? What are we doing here?

Pautzke: My assumption is that you don't have a lot of alternatives. You've got this Category 2, considering the quick turn-around between now and the June meeting, you've got these Category 2 measures that you've already passed off on and we've got to work on federalizing those into regulations. If you need a lot of alternatives to that, you need to probably clarify them at this meeting.

Behnken: Mr. Chairman, my understanding is that if we add in alternatives and start changing things around, we're going to slow down this process. As Wally very eloquently elaborated on, we're imposing incredible hardship on a lot of people out there, and we're in a box and it just seems to be the best way to go to get out of it. I think we need to keep it simple.

Pautzke: The only thing I was going to add and it may not be all that helpful is that we had to take action right away on the first part of the AP motion which is to get this interim FMP off to the Secretary right now. (Change to tape #16 here) If the council wanted to think about this other part and whether they wanted any changes in the control dates or in the Category 2 things, that possibly we could respond to and look at before we put the plan out for public review, we could come back to this later in the week, though I hate to suggest that. You don't really need to take it right now at this hour on this particular motion if you want to think about it a little bit. Where we needed to take action was on getting the Secretarial plan going so the clock had started.

Lauber: We have a motion on the floor. Is there any objection to the motion?

Krygier: Mr. Pennoyer, do you want to, should we table this for now and discuss this between agencies this week and relive it later. Would that be useful in trying to resolve some of this concern we have. I'm not going to vote for this as was proposed. I have, as an agency representative, I have a problem. We've discussed some problems between the agencies of doing this as this was proposed. I think we need to discuss those before I'd like to see a vote on this. So I'm going to move to table this.

Lauber: I guess you would informally move to table.

Pereyra: Could you be more specific in what your concerns are?

Krygier: The way this is set up right now is if we federalize all these regulations, Pennoyer is then going to have to manage the fishery. He has no staff to do that. To do the bycatch caps and to do inseason regulations with this is very intensive management, area by area. We have area biologists who are doing that. I haven't got a commitment from our agency, if we're going to go ahead and federalize this whether or not we are going to commit staff to do this. Our staff is piggybacking this operation as there is no money to do it. Our staff does that as just extra work. In most areas, we have no budget to do this. Most of those staff are terribly overworked and if we're going to send this down a different road where it's not going to be state management, we need to think about what's going on here.

Mace: Might I suggest that there's an opportunity here to lose this in the shuffle. It might be better to vote on it then you vote on the winning side and move to reconsider when you have a chance to look these things over. Otherwise, you're going to end up on Monday, and I'm afraid you'll . . .

Pennoyer: Mr. Chairman, if you're not going to be able to have area biologists assist us, and then we federalize these regulations by monitoring catch, then we are in a different ball game. The state is going to have to back out entirely in management of this fishery if we federalize the regulations, yet you were also pushing for a Magnuson Act amendment that would delegate the authority back to you to manage. I not clear what we're doing with any of this at the moment. I know you face a budget cut. We do too. That's going to affect more than just scallops, it's going to affect everything else we're doing. We'll get to a few of the other topics, like license limitation, at some point here as well. If we pass this plan to federalize the regulations and the two agencies at some point can't do it, I'm not sure how we decide that. Can we wait long enough to see what your budget is to initiate action on this.

Break

Lauber: Well, I hope that extended recess allowed a caucus and that you have some good news for us. Who wants to give it to us? The good news, that is.

Pennoyer: Mr. Krygier and I talked about this and I understand what he was saying and the concern here. I'll try to express it to the Council, but I don't think it necessarily affects what you have to do right now or should do right now. We started out in dealing with the scallop plan with a plan that delegated authority for management to the state in large measure with Council oversight as we have in crab. We did that knowing full well the state had a scallop management program in place, had people assigned to do it and was committing resources in advising us on management of the resource and carrying out the parts under the plan they had to do. That was fine. I will tell you and I think that was Mr. Krygier's point, we do not have any people to do direct scallop management. We don't have folks in the different area offices, we don't have folks looking at the scallop data, we don't have that capability right now. Through the SSC and our staff, we can do oversight functions, but we don't

have the direct management staff to do it. If you proceeded with the Amendment 1 as the AP recommended, which would be a federalizing of the regulations, it's my assumption that this is a short-term fix, because to do anything else might take six months to a year more while we wait for a Magnuson Act amendment. It is my assumption that the push is still for a Magnuson Act amendment and that we're still talking about going back to a delegated plan as soon as that's feasible. If we're not, then I've got a problem. My assumption is that is the short term we will make due under the federalized regulations with us coordinating with the state infrastructure. I think to have that state infrastructure in place, it still is necessary to have that Magnuson Act amendment to occur, so that the Council can delegate to the state through a plan that when they do, the state will have the ability to require state licenses on the vessels who've been fishing in the EEZ. I think, Earl does that summarize where we are?

Krygier: Yes. I think that was our concern. If we did not see a fix in the Magnuson Act that delegated authority to the state, we weren't going to commit our resources, our staff to any kind of consideration of managing scallops. It isn't in there to do that. The staff is already stretched very thin. The legislature of course, if they perceive a long term management by federalizing the state regulations of the scallop plan, then they don't see that as an issue they need to be concerned about funding us in the future. If they see this as a short-term fix that they're waiting for resolution through Magnuson authorization for delegating authority back to the state to manage the fishery - I see that as something we can work within. That means we need to adopt the second recommendation by the AP which is for the Council to send a message back to the folks in DC saying this is important for us to manage this scallop fishery.

Lauber: What are you referring to?

Krygier: The AP's recommendation that the Council encourage the Alaska congressional delegation to amend the Magnuson Act to insure that no further gaps in regulatory presence will result in unregulated fishing in the EEZ.

Behnken: My intent in making the motion was to take all the steps necessary to get this fishery open as soon as we can. I understand that we need to federalize it now to start in that direction. I'm also fully aware that unless we get this Magnuson Act change, the state's not going to be able to take back over and it's not going to put their resources into managing this fishery so we may not get a reopening of this fishery. I would accept as a friendly amendment Mr. Krygier's suggestion that this motion include the AP recommendation. I don't know that we just need to encourage the Alaska congressional delegation, but certainly that we encourage a congressional delegation to take steps to amend Magnuson Act so that there's no more of these loopholes and so that the state can adequately manage this fishery.

Pereyra: Mr. Chairman, I didn't think I was going to have to get into this food fight, but I think I have to open up my brown bag now and participate in it. It was my understanding based upon what Mr. Pennoyer was saying that we were going to proceed along the avenues that we haven't in the past and that was to amend the plan to provide the delegated authority for the state to under a framework arrangement to manage the fishery as we have in the crab. This so called friendly amendment goes farther. This friendly amendment resulted in a minority position from the AP and I'm in opposition to it and I cannot vote for the motion the way it's presently crafted and I use the word crafted underlined.

Pautzke: At one of our earlier meetings, the Council already backed a suggested change to the Magnuson Act to allow this to happen. We accepted the language that was offered by the Pacific States Fisheries

Commission to allow the state authority to extend into the EEZ with concurrence of the Council. We've gone on record with Congress on that already once.

Pennoyer: This is a larger issue than just scallops of course. I guess when the Council and the Secretary agrees with it delegates authority to a state that has demonstrated the ability to do the required work and management and have management capability with federal oversight, that that is not a very meaningful delegation unless it can be enforced and the scallop situation right now has shown that. We're not asking, I don't think the Council is asking that the state take over Council authority in any way. It's when the Council and the Secretary implementing it agrees that the delegation can occur, that it is the most cost effective, reasonable way to do Council oversight, then that delegation should have some teeth to it and in fact be something you can enforce. Currently, our situation in scallops shows you can't. At least we haven't figured out how to do it yet. I think the amendment you're asking for is consistent with the fact that you even write a plan developing that type of authority.

Lauber: Dr. Pautzke, you indicated that we already passed basically what that second part was regarding amendment to the Magnuson Act. Would this motion in any way change that or it would be restating it?

Pautzke: To me, it's restating what we passed before.

Lauber: I'll rule it out of order. We've already done it. The motion that would be in order is if we wanted to repeal what you had done. You've already done it so I'll get away from this hiatus that we're in. The motion as it stands now does not contain the language and anyone wishing to refer to what we previously have done can do so of course.

Hegge: I guess I have a concern along that line Mr. Chairman. As Mr. Pennoyer indicated, this goes beyond scallops. We've really been lucky that this didn't happen in crab before and for us to kind of roll along here thinking it won't is somewhat upsetting to me. I don't know, just asking for the change in the Magnuson Act causes me some worry because we thought we had a good deal with the observer program and when we got back there we found out a lot of other people didn't like what we were doing up here and maybe it's not that easy and maybe we're setting ourselves up to be in a very precarious position with other species. So without a little bit more assurance and assertiveness on it, I'm uncomfortable going forward just thinking it's going to take care of itself with the Magnuson.

Lauber: You can't assume anything when you're dealing with Congress, but all I'm saying is that we've already gone on record and that's where we are. If it will help you out of this, as I say, a motion would be in order if you wanted to withdraw that - a motion would be in order if you wanted to make it, not withdrawing the previous action, but to reinforce it with scallops or scallops and crab or something of that nature. As of now, I've ruled that we've already done that and therefore that portion of the motion is out of order. The rest of the motion is in order.

Krygier: Is the step then to amend that to do as you said which is to send a letter reinforcing our previous statement and pointing out the problems we have specifically occurring with scallops and crab here and that we need them to act on this issue? The concern that I have is that we've heard the delegation say they don't like to get involved in Council issues unless they get directed by the Council. I think we need a reminder that the Council is dealing with this and they need some clear direction.

Lauber: I believe that has already been done. In fact, in my testimony (page 5) before the Senate Commerce Committee and Senator Stevens chairing it, I made that statement because the Council had already taken that action.

Pautzke: I was going to add that under the Executive Director's report is Chairman Lauber's testimony, March 25th or something like that and on page 5 of that you see a discussion of the scallop problem and a reiteration of what we had suggested to changes of the Magnuson Act before that, based on Pacific States Marine Fisheries Commission (language). I'm pretty sure that I recall Senator Stevens saying in there that he was very strongly looking at ways to solve that jurisdictional problem. We could send it in again, but I think it's been put on record a number of times.

Hegge: My point was are we prepared or feel moved to, I guess, do the same thing with crab, because without doing the same thing with crab, we're leaving the door open knowing that it's open and everybody's been told about it.

Lauber: That again has been mentioned. I don't recall whether I covered that in testimony or not, but

Tillion: No, your testimony just said amend it, fix it.

Pautzke: That's right, all species.

Lauber: There well may be opposition to that. I understand there is. Some other states or other parties don't agree with the Council position. And it may well be that those that are supportive of that idea may have to fall back and not have a blanket, all species amendment. It may be like we've done before, only apply to Alaska and maybe it will only apply to scallops, or only scallops and crab and only in the North Pacific Council jurisdiction. I don't know, but I don't know that there's much more we can do right now we haven't already done.

Pennoyer: Mr. Chairman, I understand that and I guess Mr. Krygier's and my concern were that this specific action somehow needs linkage to that. If we do another interim plan amendment to federalize regulations, I don't think it's the Council's intent that that's the long-term direction we want to take so we're going to have staff do federal regs and we're going to have staff come back and do delegation regs and the Secretary of course has never bought that delegation plan yet. So we don't even have a delegation in front of us. My intent was not that we leave those federal regs in place and in fact that the Magnuson Act be amended hopefully and in fact the way we originally were proceeding, we continue down that track. We don't link the two, but I'm uncomfortable drafting a federal regulation plan by June, having federal regs in place, and then everybody saying oh well, it's sort of taken care of. It isn't, because we've still got crab out there to be concerned with. I want it very clear that I hope it's the Council's intent to come back as soon as possible with the delegated authority plan that we have because a lot of our planning has been predicated not on the fact that we're going to pick up a whole new fishery, they don't have the staff to deal with it now anyway, has been predicated on working with Earl's staff to accomplish this, not us doing it by ourselves.

Lauber: I haven't detected any argument to that. We have to have some legislative relief in order to allow us to do that don't we under the current situation, we can't do it. As soon as we see what Congress has done then we will be able to act accordingly, but until that time . . .

Pennoyer: Yeah, I'm thinking that's true but if we have federal regulation, I'm thinking on to crab too. The solution to this is not just to federalize all these regulations without giving me a lot more staff. I think the situation we've had with crab has been desirable. I think it's been a fairly good working relationship between our staffs and I think we've maximized our capability. That won't happen if we have to federalize those regs. So there is a tie there, it's not just "gee, we've solved this but we'd like you to do this amendment," because we haven't solved it. We haven't solved it from the

standpoint of my capabilities to manage, with people or in the crab situation. It's no more than a short-term fix as far as I'm concerned, to federalize these regs.

Lauber: Someone would almost like to guarantee us that there would be a Magnuson Act amendment, they should go out and go crab fishing in the . . . that would put the cherry on top of the sundae, I'll tell you. Any further discussion on this motion? Let's move along here. Let's go back and state the motion.

Pautzke: It's to release the draft FMP to public review with final action as soon as possible, which I'm assuming and take as an indicator it will be June, and federalize Category 2 measures. I think the intent was just a short-term arrangement.

Lauber: Any further discussion? Ready for the question? Is there any objection to the motion? Hearing none, it passes. Now, is there anything else under this agenda item?

Behnken: Mr. Chairman, I would move the crab bycatch caps as recommended by the Advisory Panel.

? Second.

Behnken: From reviewing the information we've been presented, listening to testimony, and hearing the minutes from the Advisory Panel, they seem to be appropriate numbers that have been suggested. If Wally thinks it's important to round them off that would be acceptable too.

Pereyra: How about the nearest thousandth percent?

Krygier: I was just going to object to rounding them off. Those were developed for a specific reason. They weren't pulled out . . .

Behnken: I will just move them as they stand.

Pennoyer: I know it's an AP recommendation, but I haven't heard a whole lot of commentary or SSC reports or whether these are the appropriate bycatch levels or what the rationale is for them or anything else. I know we're going to public review and we're not adopting anything, but even sending it to public review, I'm not prepared to vote on it unless somebody will tell me what, as Mr. Krygier said - don't round them off because there was a specific reason - I'm not sure what the specific reason is either, rounded or unrounded.

Lauber: Dr. Krygier.

Krygier: I was going to take a cut at that. The SSC dealt with this issue and as - I don't know if we have copies of these minutes - they indicated they were within the realm of numbers that would be acceptable and wouldn't be a conservation problem. What it really is, is an allocation issue. That's where the AP stepped in. They struggled with this the last time we dealt with this issue and developed, on the existing population size because that's what these numbers are in relation to, they decided what they were willing to allocate in numbers of crabs by species and then crank that back to a percentage that would fluctuate with the size of the abundance. You're really picking a floating cap that balances up and down with the health of the bairdi, opie and red king crab stock. The combination for what that initial number was looking at the overall bycatch rates within the groundfish fisheries and bycatch mortalities in the crab and the scallops. It was developed within the AP as an allocation of additional mortalities lost to the directed fishery.

Pennoyer: As a follow-up then on the question, I think the SSC comments were sort of, if it was in a particular range, it wouldn't cause a biological problem. It wasn't that these numbers were appropriate or this was what was needed to preserve crab stocks or anything above this or that you had to do this, even. I guess relative to being an allocation, what is the pertinence of this particular allocation. How does this equate to number of scallops that might be harvested. How does it equate to - does it come off the groundfish cap, or is this just what people are willing to give in addition to the groundfish cap? I don't know. I know they did it as an allocation but that doesn't necessarily make it a justification.

Krygier: What I tried to indicate was that they looked at the magnitude of the impacts with the existing caps, these are in addition to groundfish, for the various species of crab looked at the amount of bycatch which was already occurring and various health of the stocks and how harvest was available and they determined this additional amount for the Bering Sea would be within the realm of what would be a reasonable allocation to allow them to harvest scallops. For the king crab, it was not constraining. I'm trying to even remember if it was constraining - it was finally constraining on bairdi. Mostly because a lot of the bairdi was used up by three vessels that sat over an area and ground on them. When we called them in and pointed out that this was not probably going to do them a lot of good for extending harvest ability in the Bering Sea, they moved into a different area and their bycatch level reduced. The fishery is not managed by a cap. The scallop cap in the Bering Sea is managed by a bycatch cap of additional mortalities to each of the crab species so it's really constrained by how much crab is taken. This is how we developed the system to manage the Bering Sea fishery.

Pereyra: Mr. Chairman, I guess the concern I have is I think by carrying these numbers out to the millionth of a percent, I think it infers a certain degree of scientific integrity here in these numbers that we all know has no bearing. The gray whales going up in the Bering Sea feeding off the bottom have more of an impact than the few additional opilio or a few less opilio that may or may not be caught in a dredge fishery for scallops. I guess I could see a number there that at least people aren't going to look at and just sort of laugh because that's what happens when you see a number like this. Everyone knows it doesn't have that, not that you're reasoning in regards to the overall numbers we're going to be taking, have some degree of validity. The appearance of it is what gives me a problem.

Samuelson: Earl, does the .00176 represent 500?

Krygier: Let's see, which sheet are you, I've got to find it on my page. No, the action memo percentage that was adopted by the, we actually don't have a percentage number down here, the actual cap that was adopted by the AP is 3,000 red crabs instead of 500. In response to Dr. Pereyra, I think I've heard you comment over the years the frustration and concern with having fixed caps and not allowing them to move with the population sizes. This is an attempt by the AP to accommodate your concerns you've expressed and (end tape 16, begin tape 17 . . . something seems to be missing here as tape 17 starts with Pereyra, not the completion of Krygier's comments)

Pereyra: . . . row 32 and .1354 is probably reasonable enough. I mean rather than carrying it out to a millionth of a place, it just . . .

Krygier: I didn't develop that. I don't think I developed those.

Lauber: I didn't understand. Did you accept that or did you . . .

Krygier: I was responding to Mr. Samuelson's question and then I commented on Wally's. I don't have a calculator with me so I don't know what that does to the numbers. I don't know, I was accepting the AP's intent. I'm not accepting this.

Lauber: Were you finished Mr. Samuelson? You asked a question and I didn't know if you had a follow-up.

Samuelson: No, I wanted to offer an amendment.

Lauber: You're gonna what?

Samuelson: I going to offer an amendment to the motion. The bycatch of red king crab be set at 500 crab instead of 3,000.

Behnken: Second.

Pautzke: Do you want that as an alternative to go out for public review and you don't want the alternative of 3,000 in there cause we're going to take final action on this in June. Do you want us to look at both of the alternatives or are you trying to get one of them. . .

Samuelson: No. I'll look at both alternatives.

Behnken: I'll accept that as a friendly amendment if we're taking both.

Lauber: So you're adding 500 red king crab.

Mace: Mr. Chairman, it seems to me the simplest way to get around this would be to figure out the actual number based upon that percentage and then move to adjust that annually based upon the biomass. You accomplish the same thing but you start out with a given number and then your motion adjusts this based upon the relationship of that number to the stock yearly. Makes more sense to me.

Lauber: This is ridiculous. I mean I don't know who the hell knows how many damn crab are down there and . . . We do silly things all the time. Why not this one.

Pennoyer: Mr. Chairman, my original questions didn't have anything to do with the fact I don't think we're going to have a bycatch limit on the scallop fleet because I do. My understanding of the AP recommendation for bairdi and opilio is similar to what the Council approved to go forward for discussion in the January meeting. We did have a discussion, I'm trying to harken back to it, as the appropriateness of those numbers and I assume the record contains some discussion as to why the things you said were presented in tabular form. We went through them and discussed them. I'm starting to remember that. On the red king crab however, I thought, maybe Dave Witherell can help me, I thought they were also recommending a percentage on that, too, relative to population abundance. How did we end up with a 3,000 . . .

Witherell: The AP recommended a rate of approximately 3,000 red king crabs . . . (can't hear)

Pennoyer: How come their minutes reflect just a number then?

Behnken: So we have two rates.

Pautzke: I thought we have 500 and 3,000.

Pereyra: They may not have had the denominator.

Pennoyer: That would be .000000 something or another, but I . . .

Lauber: But we got a range.

Krygier: To accommodate Wally's concern and Bob's, I think it probably does make sense to put in the number that they picked and then say this is represented by point something, something, the number. You can go out to the decimal point then and say which is what will be the yearly rate depending on the size. I assumed that was what the staff was going to do. That's the logical way to do this.

Samuelson: On the red king crab stocks, when we've got a 47% decrease in females and a 30% decrease in pre-recruitments, and a stock that is below threshold and we have a rate bycatch on that stock of 3,000 crabs, I'd hate to see when that king crab stock comes back healthy, what the bycatch rate is going to be. It's going to be equivalent to the directed fishery. If we're below threshold now, and we got a rate that shows 3,000 crab and we've got the commercial fishery shut down, you know I want to see some numbers before I vote on this. I want to see some numbers when that crab stock comes back healthy, what that rate is going to be. If we're going to base it on a sliding scale percentage basis. We could potentially have 250, 300, 500,000 red king crab being allocated by this motion that's on the floor now based on rate as bycatch. How do you deal with it in June also.

Pennoyer: I just wanted to find out what the final motion was.

Lauber: We have an amendment that we add - was that accepted?

Behnken: It was my motion.

Lauber: Yours, okay. Okay so now we have the friendly amended main motion.

Behnken: Could I ask for clarification on the amendment. My understanding was that it was 500, not a rate that translated to 500, and if the maker of the motion intended it to be a rate translating into 500, I think that should be clarified.

Samuelson: Mr. Chairman, before us we have the AP minutes. The AP minutes deal with rates in the opilio and bairdi fishery. In the king crab rate, it says the bycatch cap for red king crab will be set at 3,000 crab to be available. Now the staff is telling us one thing, we've got the minutes from the AP. I've made my motion based on a fixed number - 3,000 we're going to allocate. The Council when it looked at this issue earlier, looked at a directed number. Not on a rate.

Behnken: So my understanding then of the amendment I accepted was the motion would show a rate equivalent to 3,000 as the AP recommended and then also an option to be considered which is a flat number of 500.

Samuelson: According to Linda, we've got two options. We going to look at either a rate based on a percentage in June or a flat rate. That's what we have before us.

Pautzke: But proposed numbers - 500 and 3,000 - that's not what she just stated. She said a bycatch rate leading to 3,000 or flat cap of 500 and I think what you're saying is look at both for both and make your decision in June.

Samuelson: Right.

Lauber: Any further discussion. Are you ready for the question? Is there any objection to the motion? Hearing none, it passes. Now is there any other further motions on this.

Pautzke: Is that it? Are we done Dave?